DOCUMENT RESUME

ED 314 839 EA 021 528

TITLE Model Policy on Identifying and Reporting Child Abuse and Model Policy and Rules on Procedures for Investigating Allegations of Abuse of Students by School Employees.
INSTITUTION Iowa State Dept. of Education, Des Moines.
PUB DATE Nov 89
NOTE 80p.
PUB TYPE Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC04 Plus Postage.
DESCRIPTORS *Child Abuse; Child Neglect; Elementary Secondary Education; School Policy; *Sexual Abuse; *Teacher Responsibility; *Teacher Student Relationship
IDENTIFIERS *Iowa

ABSTRACT

Since 1985, Iowa has required certain health practitioners, social workers, certified school employees, psychologists, licensed day care providers, and other professionals to report suspected cases of child abuse directly to the Department of Human Services (DHS). Since school employees are not persons responsible for a child's care under the child abuse laws, a school employee who abuses a student is not subject to investigation by the DHS. Subsequently, the Iowa State Legislature has required that all schools adopt a uniform procedure for investigating allegations of abuse of students by school employees. The first of two sections within this document provides the model policy on identifying and reporting child abuse, the reporting procedures, and information on reporting. The appendices to the first section include a list of the DHS's officers, and a suspected child abuse reporting form. Contained within the second section is a model policy for investigating allegations of student abuse by a school employee. Appended is a student abuse report; a level-one investigation report; a list of Chapter 102 complaints for 1989-90 and 1990-91; a list of Iowa licensed investigators; the sexual abuse law and the reasonable force law; information regarding Chapter 102; and a Board of Education Examiner's complaint form. (KM)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

MODEL POLICY
on
IDENTIFYING AND REPORTING CHILD ABUSE

IMPORTANT: THIS IS A MODEL ONLY

Do not accept any portion of this model as local policy or rules until after full and sufficient consideration. It is always wise to have proposed local policies and regulations reviewed by legal counsel.

Des Moines, Iowa
December, 1989

State of Iowa
DEPARTMENT OF EDUCATION
Grimes State Office Building
Des Moines, Iowa 50319-0146

STATE BOARD OF EDUCATION

Karen K. Goodenow, President, Spirit Lake
Dianne L.D. Paca, Vice President, Garner
Betty L. Dexter, Davenport
Thomas M. Glenn, Des Moines
Francis N. Kenkel, Defiance
Ron McGauvran, Clinton
Mary E. Robinson, Cedar Rapids
Ann Wickman, Atlantic
George Wilson, Sioux City

ADMINISTRATION

William L. Lepley, Director and Executive Officer
of the State Board of Education
David H. Bechtel, Special Assistant
Mavis E. Kelley, Special Assistant

Prepared by a Committee of Law and Education Professionals

Kathy L. Collins, J.D.	Administrative Legal Consultant, Departmentof Education
David H. Bechtel	Special Assistant to Director, Iowa Department of Education
Orrin Nearhoof, Ph.D.	Chief, Bureau of Practitioner Preparation and Licensure, Iowa Department of Education
Maryellen Knowles, Ph.D.	Assistant Chief, Bureau of Instruction and Curriculum, Iowa Department of Education
Gaylord Tryon, Ph.D.	Executive Director, School Administrators of Iowa
Elizabeth Cooper, J.D.	Director, Legal Services, Iowa Association of School Boards
Sue Seitz, J.D.	Belin Harris Helmick Tesdell Blackledge McCormick PC
Rick Engel, J.D.	Engel Law Office
Elizabeth Gregg Kennedy, J.D.	Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee

Teri S. Nordgaard, Editorial Assistant

It is the policy of the Iowa Department of Education not to discriminate on the basis of race, religion, national origin, sex, age, or disability.

The Department provides civil rights technical assistance to public school districts, nonpublic schools, area education agencies, and area schools to help them eliminate discrimination in their educational programs, activities, or employment. For assistance, contact the assistant chief, Bureau of School Administration and Accreditation, Iowa Department of Education.

MODEL POLICY
on
IDENTIFYING AND REPORTING CHILD ABUSE

Table of Contents

Introduction i

Policy Statement 1

Reporting Procedure 2

Policy 3

Appendix A 9

Appendix B 12

MODEL POLICY
on
IDENTIFYING AND REPORTING CHILD ABUSE

and

MODEL POLICY AND RULES
on
PROCEDURES FOR INVESTIGATING
ALLEGATIONS OF ABUSE OF STUDENTS
BY SCHOOL EMPLOYEES

Introduction

In 1965, the Iowa General Assembly enacted a law requiring "health practitioners" to report suspected child abuse. In 1974, the legislature expanded the category of mandatory reporters to include certain social workers, certificated school employees, psychologists, licensed day care providers, and other specified professionals. In 1985, another modification to the law was made to require direct reporting by mandatory reporters to the Department of Human Services rather than (indirectly) to a superior.

Thereafter, employers of those persons required by law to report child abuse were required to train their employees who are mandatory reporters in identifying and reporting; the two-hour training is to be given within six months of initial employment and every five years after that.

School employees are not deemed to be "persons responsible for the care of a child" under the child abuse laws. Therefore, an employee of a school who assaults or otherwise abuses a student is not subject to investigation by the Department of Human Services, but is, of course, subject to civil, criminal, and other administrative actions including potential employment and licensure consequences.

The legislature has required all schools in the State of Iowa to adopt a uniform procedure for investigating allegations of abuse of students by school employees. Iowa Code §280.17 (1989). In response to a statutory directive, the Department of Education, in consultation with the Department of Human Services, has established administrative rules and a Model Policy for adoption by public school boards and authorities in charge of nonpublic schools.

The first Model Policy herein deals with the mandatory duty to report suspected child abuse under Iowa Code section 232.69. The second Model Policy contained in this publication covers the duty under Iowa Code section 280.17 to investigate allegations that a school employee has physically or sexually abused a student. It is extremely important that school employees understand the difference between the two laws and procedures.

Neither policy deals with employment consequences for either the failure to report suspected child abuse or for committing physical or sexual abuse of a student. The Iowa Code establishes criminal and civil liability for a mandatory reporter's failure to report suspected child abuse. Iowa Code §232.75 (1989). The issue of employment consequences is left to the policy makers at the school or school district level. In

cases of founded abuse of students by certificated or licensed school employees, the rules do require the filing of a complaint with the State Board of Educational Examiners who will investigate for purposes of licensure suspension or revocation.

The Model Policy on Identifying and Reporting Child Abuse is only a model. It contains ethical, educational, and legal judgments. Therefore, it should not be accepted in whole or in part without sufficient consideration. It is wise, as well, to have local policies and rules reviewed by legal counsel.

The Policy and Procedures for Charging and Investigating Allegations of Abuse of Students by School Employees is required to be adopted by all schools. Iowa Code §280.17 (1989). It is based on administrative rules adopted by the State Board of Education and found at Iowa Administrative Code 281--102. The explanation and commentary offered by the Department and a selected committee of individuals is for guidance only, not for adoption.

MODEL POLICY
on
IDENTIFYING AND REPORTING CHILD ABUSE

It is the policy of the _____ School (District) that any certificated or licensed employee who has a reasonable belief that a child under the age of 18 has been abused by a person responsible for the care of the child, as defined by law, shall report the suspected abuse verbally to the Department of Human Services (DHS) within twenty-four hours, and follow the verbal report with a written report on appropriate forms. The reporting of suspected abuse of children by noncertificated or nonlicensed employees is encouraged. The failure on the part of an employee who is a mandatory reporter to make a report as required by law may subject the employee to disciplinary sanctions up to and including discharge.

It is also the policy of the _____ School (District) that reports of child abuse remain confidential, as required by law.

The _____ School (District) shall provide the training required by law in the identification and reporting of child abuse, to all mandatory reporters employed by the school within six months of initial employment. The school shall also provide each new employee, who is a mandatory reporter, with the legal requirements of child abuse reporting within one month of initial employment.

The _____ School (District) administration and staff will cooperate fully with DHS personnel in conducting a child abuse investigation by providing confidential access to the child named in the report, and to other children alleged to have relevant information, for the purpose of interviews. The _____ School (District) recognizes no obligation to contact the parents or guardians of a child suspected to be a victim of abuse.

Date of Adoption _____

Legal References:
Iowa Code §232.68, .69, .70, .71(6).

Reporting Procedure
(To be disseminated to all certificated
employees within one month
of initial employment)

Any certificated staff or administration member who has a reasonable belief that a child enrolled in the _____ School (District) has suffered abuse by a person responsible for the care of that child shall observe the following procedures:

1. Contact the Department of Human Services (DHS) by telephone or in person to make an oral report of suspected abuse within twenty-four hours of the suspected abuse. The local office number is _____.

[NOTE: The telephone numbers of the State and all local offices of the DHS are included as Appendix A to this Model Policy.]

2. Follow the oral report with a written report, on forms provided by the DHS, within forty-eight (48) hours of the oral report.

[NOTE: A copy of the reporting form is included as Appendix B to this Model Policy.]

3. Cooperate with DHS personnel in conducting their investigation.

4. Maintain a copy of the school employee's written report in the employee's personal file at home, for the sole purpose of documenting the fact that the employee reported the suspected abuse. If a written report is received by the employee from the DHS following the investigation, such report shall be also filed with the employee's copy of the suspected abuse report, or destroyed.

5. The employee shall maintain the confidentiality of the report at all stages following the oral report of suspected abuse.

- -

Comment: The law (Iowa Code §232.69(3)) requires employers to notify employees of the reporting procedure even before the training is implemented. This information is to be disseminated to all new employees "within one month of initial employment." (The training is required within six months of initial employment, and every five years thereafter.)

The training required for mandatory reporters is to be two hours in length. The law does not speak to what constitutes or satisfies the training requirement, or who is competent to provide the training. However, the DHS has issued a two-hour video to assist employers in fulfilling this duty. The video itself is not mandatory, but is offered in lieu of contracting with DHS employees to provide the training directly, which would create a serious burden on the staff of DHS around the state.

Information to Assist Mandatory
Reporters in Reporting Suspected Abuse

Q: What is the definition of a "child" for the purposes of reporting child abuse?

A: The law defines "child" in this chapter to be "any person under the age of eighteen years." Therefore, an 18 year-old student cannot be abused under the child abuse laws, but may be a "dependent adult" for purposes of chapter 235B of the Code of Iowa.

Q: Who can commit child abuse?

A: Only a "person responsible for the care of a child" can commit child abuse. The law states that that term includes:

a. A parent, guardian, or foster parent;

b. A relative or any other person with whom the child resides, without reference to the length of time or continuity of such residence;

c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

[NOTE: For expediency, this Model Policy uses interchangeably the term "person responsible for the care of a child" and "caretaker" or "care giver."]

Q: What if a mandatory reporter suspects that a child has been abused by someone other than a "person responsible for the care of a child"?

A: The matter is then one for law enforcement, but there is no legal obligation to report to DHS or law enforcement abuse that occurs by someone other than a caretaker as defined above. There is, however, a special procedure for schools to follow if a complaint is made that a child has allegedly been abused by a school employee. This procedure does not involve the DHS because that department only has jurisdiction of complaints that meet the legal definitions of "child," "abuse" and "person responsible for the care of a child."

Q: What constitutes "abuse"?

A: There are four different categories of abuse in the law: physical, sexual, neglect, and encouraging (and failing to discourage) acts of prostitution by the child.

a. Physical abuse is any non-accidental physical injury, or injury which is at variance with the history given of it, suffered by a child as a result of the acts or omissions of a care giver.

[NOTE: The DHS uses a definition of "injury" that requires that evidence of the injury must still exist 24 hours after the abuse occurs. Thus, a mark that disappears within twenty-four hours would not be an "injury." Presumably this accounts for the twenty-four hour period allotted by law before an abuse report is made.]

b. Sexual abuse includes any sexual offense "with or to a child as a result of the acts or omissions of" the caretaker.

c. Neglect is "the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so."

d. Encouraging or failing to discourage prostitution by the child means that the caretaker actively encourages or fails to act to deter the child from selling or offering for sale the child's services as a partner in a sex act, or purchasing or offering to purchase such services.

Q: Is mental abuse or verbal abuse covered by the child abuse definition?

A: No. However, "mental injury" to a child by a person responsible for the care of a child is one ground or basis for filing a petition in juvenile court alleging that a child is in need of assistance ("CHINA"). Iowa Code §232.2(6)(c)(1)(1989).

Q: What about a parent or other person responsible for the care of a child who fails to supervise or obtain supervision for a child, or leaves a young child unattended for considerable periods of time?

A: This should be reported under the "neglect" portion of the child abuse laws, but may also be the basis of a CHINA petition alleging "the failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child."

A concerned employee may wish to contact the local county attorney's office for a complete discussion of CHINA petitions, but recognize that there is no mandatory filing of a CHINA petition by a mandatory child abuse reporter.

Q: What constitutes an "omission" under the child abuse laws?

A: If a person responsible for the care of a child fails to take action to protect the child from foreseeable harm when a reasonable person would do so under the same circumstances, that failure to act constitutes an "omission."

Q: Will the mandatory reporter find out the results of the investigation?

A: Yes. The law says that the DHS "may" report back to the mandatory reporter, but the DHS' own rules require it to be done. If a mandatory reporter does not receive a follow-up report, he or she should call the local DHS office and request it under DHS chapter 175.

Q: What are some "danger signs" to look for if one suspects child abuse?

A: The training required of all mandatory reporters is designed to provide guidance and instruction in identifying child abuse, but some general indicia of abuse include the following:

a. A child tells several conflicting stories as to the cause of the same injury.

b. A child seems to be injured frequently.

c. A child expresses reluctance to tell how the injury occurred.

d. A child is afraid to go home.

e. A child tells the teacher or a playmate that someone responsible for the child inflicted the injury.

f. A child relates a story about the injury that seems inconsistent with the injury.

Q: How far can a mandatory reporter go in checking a child for abuse?

A: The law is not specific as to what actions a reporter can take to determine a child's injury except to state that a mandatory reporter may "take or cause to be taken, at public expense, photographs or x-rays of the areas of trauma visible on a child."

There are limitations in the law as to what extent DHS investigators can go in viewing the child's body to document abuse, but those limitations do not appear to be applicable to mandatory reporters.

Clearly, a mandatory reporter should exercise good, sound judgment in viewing a child's body, and should not insist, over the child's objections, on viewing covered or clothed areas. One can have a "reasonable belief" that abuse occurred without asking the child to expose him- or herself.

Q: How rigid is the confidentiality provision? Is an employee/mandatory reporter prohibited from discussing the child's condition with other school employees?

A: The confidentiality provision attaches at the time the oral report is made, and the law provides that the reporter is, from that time forward, prohibited from discussing the fact of abuse or the report made with anyone except DHS personnel. Therefore, if an employee/mandatory reporter wishes to discuss the child's condition, any conversation with others should take place prior to the oral reporting but within the twenty-four hour period.

No person should dissuade or discourage a mandatory reporter from filing a report of suspected abuse. When that other person reasonably believes that the situation does not constitute child abuse, or believes the mandatory reporter is overreacting or is unreasonable in his/her belief that the situation is one of child abuse, those thoughts should not be conveyed in such a way as to lead the mandatory reporter to the conclusion that he or she is prohibited from filing the report under threat of consequences.

The one exception to the confidentiality law is when the mandatory reporter believes that photographs or x-rays "need to be taken" of the child's trauma. (Iowa Code §232.77). In that case, the mandatory reporter is permitted to tell the person's supervisor (building principal or superintendent) of the need to take pictures or to have x-rays taken. (There is no statutory explanation of when "need" arises, but the law allows photographs or x-rays to be taken at public expense. In most cases, the decision to take photographs or x-rays should probably be made by DHS.)

Q: What is the penalty for failure to report suspected child abuse or the penalty for filing a false report?

A: The law states as follows:

1. Any person, official, agency or institution, required by this chapter to report a suspected case of child abuse who knowingly and willfully fails to do so is guilty of a simple misdemeanor.

2. Any person, official, agency or institution, required by section 232.69 to report a suspected case of child abuse who knowingly fails to do so is civilly liable for the damages proximately caused by such failure.

3. A person who reports or causes to be reported to the department of human services false information regarding an alleged act of child abuse, knowing that the information is false or that the act did not occur, commits a simple misdemeanor.

[NOTE: A simple misdemeanor is a criminal designation and carries with it the potential of a 30-day jail sentence, a fine of up to $100.00, or both.]

Q: Is a person who "reasonably believes" a child has suffered from abuse subject to suit by anyone if it turns out the child was not abused after all?

A: The legislature has given criminal and civil immunity to any person who participates in good faith in the making of a report. This means that if a person is sued for making a report, he or she must prove that the report was made in good faith, and then no damages or punishment can be assessed against the person reporting or assisting in the investigation. The opposite of "good faith" is willfully filing a false report with the knowledge that the information is untrue.

Thus, a person can still be sued, but if the court or jury determines that the report or other assistance was made "in good faith," the reporter is not going to be held civilly or criminally liable.

Public school employees are guaranteed legal representation by statute if they are sued "in the course of" their employment. The local board is required to "defend, indemnify and hold harmless" any employee sued for an action taken during the course of employment. So even if the employee is sued, he or she should not have to pay anything or hire a lawyer, so long as (1) the report was made in good faith, and (2) the report was made because the employee was fulfilling his or her obligation to report suspected abuse learned of or seen at school.

The same would not be true if the employee reported abuse of, for example, a next door neighbor's child upon hearing the child's cries or witnessing an incident of abuse outside the school setting. The mandatory reporting duty arises for certificated/licensed school employees who suspect abuse during the course of "counseling, attending, examining, or treating" children, or, in other words, as part of their job duties at school.

Q: Since school guidance counselors, school psychologists, and school social workers have a statutory privilege of communication, what happens if one of those people learns from a student-counselee that the student has been abused? Must that professional break the confidence? Can he or she?

A: While it is true that school counselors, psychologists, and social workers are required to maintain confidential communications with their clients, one of the child abuse laws (section 232.74) specifically exempts "mental health professionals" and specified others from the privilege for the purpose of reporting child abuse.

This means the privilege does not apply, and the professional is required to report the suspected abuse, in situations where he or she has a reasonable belief that the child is the victim or perpetrator of abuse.

Although the terms "school guidance counselor," "school social worker" and "school psychologist" are not mentioned specifically but rather the term "mental health professional" is used, it is the belief of the Department of Education that the intent of the law is to cover those three professions. The intent of the law requiring child abuse reporting would certainly be thwarted if the counselor, psychologist, or social worker is required to report abuse, but prohibited from reporting if the information came from the child's own mouth directly. The Department is, at this writing, seeking an amendment to the statute to clarify those professionals' responsibility.

APPENDIX A

Department of Human

Services Offices

DISTRICT AND COUNTY
DEPARTMENT OF HUMAN SERVICES
OFFICES

County	Number	County	Number
Adair	1-515-743-2119	Decatur	1-515-446-4312
Adams	1-515-322-4031	Delaware	1-319-927-4512
Allamakee	1-319-568-4583	Des Moines	1-319-754-4622
Appanoose	1-515-437-4450	Dickinson	1-712-336-2555
Audubon	1-712-563-4259	Dubuque	1-319-557-8251
Benton	1-319-472-4746	Emmet	1-712-362-7237
Black Hawk	1-319-291-2436	Fayette	1-319-422-5634
Boone	1-515-432-6387	Floyd	1-515-228-5713
Bremer	1-319-352-4233	Franklin	1-515-456-4763
Buchanan	1-319-334-6091	Fremont	1-712-374-2512
Buena Vista	1-712-749-2536	Greene	1-515-386-2143
Butler	1-319-267-2594	Grundy	1-319-824-6941
Calhoun	1-712-297-8524	Guthrie	1-515-747-2293
Carroll	1-712-792-4391	Hamilton	1-515-832-2231
Cass	1-712-243-4401	Hancock	1-515-923-3758
Cedar	1-319-886-6036	Hardin	1-515-858-3461
Cerro Gordo	1-515-424-8641	Harrison	1-712-644-2460
Cherokee	1-712-225-2588	Henry	1-319-986-5157
Chickasaw	1-515-394-4315	Howard	1-319-547-2860
Clarke	1-515-342-6516	Humboldt	1-515-332-3383
Clay	1-712-262-3586	Ida	1-712-364-2631
Clayton	1-319-245-1766	Iowa	1-319-642-5573
Clinton	1-319-242-0573	Jackson	1-319-652-5661
Crawford	1-712-263-5668	Jasper	1-515-792-1955
Dallas	1-515-993-4264	Jefferson	1-515-472-5011
Davis	1-515-664-2239	Johnson	1-319-356-6050

County	Number
Jones	1-319-462-3557
Keokuk	1-515-622-2090
Kossuth	1-515-295-7771
Lee (north)	1-319-372-3651
Lee (south)	1-319-524-1052
Linn	1-319-398-3950
Louisa	1-319-523-6351
Lucas	1-515-774-5071
Lyon	1-712-472-3743
Madison	1-515-462-2931
Mahaska	1-515-673-3496
Marion	1-515-842-5087
Marshall	1-515-752-6741
Mills	1-712-527-4803
Mitchell	1-515-732-5524
Monona	1-712-423-1921
Monroe	1-515-932-5187
Montgomery	1-712-623-4838
Muscatine	1-319-263-9302
O'Brien	1-712-757-5135
Osceola	1-712-754-3622
Page	1-712-542-5111
Palo Alto	1-712-852-3523
Plymouth	1-712-546-8877
Pocahontas	1-712-335-3565
Polk	
Admin.	1-515-278-5349
Central	1-515-286-3555
East	1-515-286-3270
Pioneer-Columbus	1-515-286-3600
South	1-515-286-3549
Pottawattamie	1-712-328-5648
Poweshiek	1-515-236-3149
Ringgold	1-515-464-2247
Sac	1-712-662-4782
Scott	1-319-326-8680
Shelby	1-712-755-3145
Sioux	1-712-737-2943
Story	1-515-233-3740
Tama	1-515-484-3406
Taylor	1-712-523-2129
Union	1-515-782-2173
Van Buren	1-319-293-3791
Wapello	1-515-682-8793
Warren	1-515-961-5353
Washington	1-319-653-7752
Wayne	1-515-955-6353
Webster	1-515-573-8169
Winnebago	1-515-582-3271
Winneshiek	1-319-382-2928
Woodbury	1-712-255-0833
Worth	1-515-324-1013
Wright	1-515-532-6645
STATE REGISTRY	
	1-800-362-2178
or	1-800-362-2179

APPENDIX B

Department of Human Services

Suspected Child Abuse

Reporting Form

Iowa Department of Human Services

SUSPECTED CHILD ABUSE REPORTING FORM

This form may be used as the written report which the law requires all mandated reporters to file with the Department of Human Services, following an oral report of suspected child abuse. Fill in as much information under each category as is known. Submit the completed form to the local office of the Department of Human Services.

FAMILY INFORMATION

Name of Child_____ Age:_____ Date of Birth:_____

Address:_____

Phone:_____ School:_____ Grade Level:_____

Name of Parent or Guardian:_____ Phone (if different from child's):_____

Address (if different from child's):_____

Other Children in the Home:

NAME	BIRTHDATE	CONDITION

INFORMATION ABOUT SUSPECTED ABUSE: In this section, indicate the date of suspected abuse; the nature, extent and cause of the suspected abuse; the person(s) thought to be responsible for the suspected abuse; evidence of previous abuse; and other pertinent information needed to conduct the investigation. Use the back of this form if necessary to complete the information requested above and to identify individuals who have been informed of the child abuse report, such as building administrator, supervisor, etc.

REPORTER INFORMATION

Name and Title or Position:_____

Office Address:_____

Phone:_____ Relationship to Child:_____

Name(s) of other mandatory reporter(s) who has/have knowledge of the abuse. _____

_____

_____ _____

Signature of Reporter Date

SS-1705-0 (Rev. 8/86) 470-0665

MODEL POLICY AND RULES
on
PROCEDURES FOR INVESTIGATING ALLEGATIONS OF ABUSE OF STUDENTS BY SCHOOL EMPLOYEES

Des Moines, Iowa
December, 1989

MODEL POLICY AND RULES
on
PROCEDURES FOR INVESTIGATING
ALLEGATIONS OF ABUSE OF STUDENTS
BY SCHOOL EMPLOYEES

Table of Contents

Introduction 1

Policy Statement 3

Policy 4

Appendix A -- Report of Abuse of a Student 27

Appendix B -- Report of Level-One Investigation. 30

Appendix C -- Chapter 102 Complaints 1989-90 33

Appendix D -- Chapter 102 Complaints 1990-91 35

Appendix E -- List of Iowa Licensed Investigators. 37

Appendix F -- Sexual Abuse Law 43

Appendix G -- Reasonable Force Law 47

Appendix H -- Response to Typical Questions Regarding Chapter 102. . . 50

Appendix I -- Board of Educational Examiners Complaint Form. 55

MODEL POLICY
on
IDENTIFYING AND REPORTING CHILD ABUSE

and

MODEL POLICY AND RULES
on
PROCEDURES FOR INVESTIGATING
ALLEGATIONS OF ABUSE OF STUDENTS
BY SCHOOL EMPLOYEES

Introduction

In 1965, the Iowa General Assembly enacted a law requiring "health practitioners" to report suspected child abuse. In 1974, the legislature expanded the category of mandatory reporters to include certain social workers, certificated school employees, psychologists, licensed day care providers, and other specified professionals. In 1985, another modification to the law was made to require direct reporting by mandatory reporters to the Department of Human Services rather than (indirectly) to a superior.

Thereafter, employers of those persons required by law to report child abuse were required to train their employees who are mandatory reporters in identifying and reporting; the two-hour training is to be given within six months of initial employment and every five years after that.

School employees are not deemed to be "persons responsible for the care of a child" under the child abuse laws. Therefore, an employee of a school who assaults or otherwise abuses a student is not subject to investigation by the Department of Human Services, but is, of course, subject to civil, criminal, and other administrative actions including potential employment and licensure consequences.

The legislature has required all schools in the State of Iowa to adopt a uniform procedure for investigating allegations of abuse of students by school employees. Iowa Code §280.17 (1989). In response to a statutory directive, the Department of Education, in consultation with the Department of Human Services, has established administrative rules and a Model Policy for adoption by public school boards and authorities in charge of nonpublic schools.

The first Model Policy herein deals with the mandatory duty to report suspected child abuse under Iowa Code section 232.69. The second Model Policy contained in this publication covers the duty under Iowa Code section 280.17 to investigate allegations that a school employee has physically or sexually abused a student. It is extremely important that school employees understand the difference between the two laws and procedures.

Neither policy deals with employment consequences for either the failure to report suspected child abuse or for committing physical or sexual abuse of a student. The Iowa Code establishes criminal and civil liability for a mandatory reporter's failure to report suspected child abuse. Iowa Code §232.75 (1989). The issue of employment consequences is left to the policy makers at the school or school district level. In

cases of founded abuse of students by certificated or licensed school employees, the rules do require the filing of a complaint with the State Board of Educational Examiners who will investigate for purposes of licensure suspension or revocation.

The Model Policy on Identifying and Reporting Child Abuse is only a model. It contains ethical, educational, and legal judgments. Therefore, it should not be accepted in whole or in part without sufficient consideration. It is wise, as well, to have local policies and rules reviewed by legal counsel.

The Policy and Procedures for Charging and Investigating Allegations of Abuse of Students by School Employees is required to be adopted by all schools. Iowa Code §280.17 (1989). It is based on administrative rules adopted by the State Board of Education and found at Iowa Administrative Code 281--102. The explanation and commentary offered by the Department and a selected committee of individuals is for guidance only, not for adoption.

The State Board and Department of Education wish to enlist your assistance in tracking the number of complaints against school employees filed under chapter 102 and the perceived effectiveness of this process. For school years 1989-90 and 1990-91, please ask the designated investigator to document all complaints filed throughout the year, to complete the forms found at Appendices C and D of this booklet, and to mail it at the close each school year (June 30, 1990 and June 30, 1991) to

Legal Consultant
Iowa Department of Education
Grimes State Office Building
Des Moines, Iowa 50319-0146

Thank you.

Policy Statement
and
Procedures for Charging and Investigating
Allegations of Abuse of Students
by School Employees

STATEMENT OF POLICY

It is the policy of the _____ school (district) that school employees not commit acts of physical or sexual abuse, including inappropriate and intentional sexual behavior, toward students. Any school employee who commits such acts is subject to disciplinary sanctions up to and including discharge.

It is the policy of the _____ school (district) to respond promptly to allegations of abuse of students by school employees by investigating or arranging for full investigation of any allegation, and to do so in a reasonably prudent manner. The processing of a complaint or allegation will be handled confidentially to the maximum extent possible. All employees are required to assist in the investigation when requested to provide information, and to maintain the confidentiality of the reporting and investigating process.

The _____ school (district) has appointed a level-one investigator(s) and alternate(s), and has arranged for or contracted with a trained, experienced professional to serve as the level-two investigator. The level-one investigator(s) and alternate(s) will be provided training in the conducting of an investigation, at the expense of the _____ school (district).

The superintendent or designee shall prescribe rules in accordance with the rules adopted by the State Board of Education to carry out this policy.

Date of Adoption _____

Legal References: Iowa Code §280.17
Iowa Admin. Code 281--102

RULES

281--102.1(256) Statement of intent and purpose. It is the purpose and intent of these rules to create a uniform procedure for the reporting, investigation, and disposition of allegations of abuse of students directly resulting from the actions of school employees or their agents. The scope of this policy is limited to protecting children in prekindergarten and K-12 educational programs.

COMMENT: There is no duty to investigate under these rules if the reporter opts to go to another source to complain. In addition, there is no duty on the part of a parent, student, or any other reporter to use this process. The duty is on the school or district only when a report or complaint is made to the school or school district. Unlike suspected child abuse, there is no mandatory reporting of suspected abuse of students by school employees established by these rules. Certainly, permissive reporting of suspected abuse of students is to be encouraged.

281--102.2(256) Definitions.

"Abuse" may fall into either of the following categories:

1. "Physical abuse" means nonaccidental physical injury to the student as a result of the actions of a school employee. Injury occurs when evidence of it is still apparent at least 24 hours after the incident. Physical abuse may occur as the result of intentional infliction of injury or excessive, unnecessary, or unreasonable use of force.

COMMENT: The definitions of physical and sexual abuse include only overt actions; omissions by school employees, or the failure to act, are not covered by these rules.

The definition of physical abuse has three key words:

1. *"Nonaccidental": the physical contact must have been on purpose or intentional;*
2. *"Physical": the injury alleged to have occurred must be to the person, to his or her body.*

Mental or verbal abuse is not covered by these rules. (However, some behaviors may subject a certificated or licensed school employee to the criteria of professional practices of the State Board of Educational Examiners. For example, one of the criteria at the current time (late 1989) is ". . . In fulfilling obligations to the student, the educator: . . . d. Shall conduct professional business in such a way that the educator does not expose the student to unnecessary embarrassment or disparagement." I.A.C. 287–3.3(1)"d";

3. "Injury": The department has adopted the Department of Human Services' guideline and definition of injury. Specifically, injury occurs when evidence of it is still apparent 24 hours after the incident. "Physical injury" means damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition or damage to any bodily tissue which results in the death of the person who has sustained the damage. I.A.C. 441--175.1.

2. "Sexual abuse" means any sexual offense as defined by Iowa Code chapter 709, or Iowa Code section 728.12(1). The term also encompasses acts of the school employee that encourage the student to engage in prostitution as defined by Iowa law, as well as inappropriate, intentional sexual behavior by the school employee toward a student.

COMMENT: The definition of sexual abuse is deliberately broad and is designed to govern intentional conduct that may not for various reasons subject the school employee to criminal prosecution, but is nevertheless inappropriate conduct between an adult school employee and a student. This would include sexual language and innuendo or behaviors with suggestive sexual overtones, as well as sexual social behaviors such as kissing, dating, etc. It would certainly include sexual harassment or the promise of favorable treatment in return for sexual favors or activities.

Sections of the Iowa Code pertaining to statutory sexual abuse are reprinted in Appendix F.

"Board of Educational Examiners" means the state board of educational examiners as created by 1989 Iowa Acts, House File 794, section 2 [Codified at Iowa Code chapter 260 (Supp. 1990)].

"Designated investigator" means the person or persons appointed by the board of directors of a public school district, or the authorities in control of a private school, at level one, to investigate allegations or reports of abuse of students by school employees, and shall also refer to the appointed alternate.

COMMENT: The designated investigator (level one) may be anyone, including a school employee. We recommend that if the designated investigator is male, the alternate be female. A person making a report may report to the alternate rather than the designated investigator, and the alternate should proceed with the investigation. In other words, a reporter may choose between or among all persons, designated and alternates, in deciding to whom the report is made. One purpose for the requirement that an alternate or alternates be appointed is to give the person reporting a choice. Another

purpose is to assure availability. Finally, if the reporter files a report naming the designated investigator as the employee responsible for the alleged abuse, someone else obviously must conduct the investigation.

"Preponderance of evidence" means reliable, credible evidence that is of greater weight than evidence offered in opposition to it.

COMMENT: The "preponderance of evidence" standard is generally accepted to mean the greater weight of the evidence, or over 50 percent of the total evidence, considering witness' credibility (believability) in addition to physical and testimonial types of evidence.

"Nonpublic school" means any school in which education is provided to a student, other than in a public school or in the home of the student.

"Public school" means any school directly supported in whole or in part by taxation.

"Reasonable force" is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

COMMENT: The factors that help determine "reasonable force" in any given situation are listed in a separate rule to follow. "Reasonable" use of force means enough to meet the force exerted by the other and to take control of the situation, but not more.

"School employee" means a person who works for pay or as a volunteer under the direction and control of:

1. The board of directors or of any administrator of a public school district.
2. The board or authorities in control of a nonpublic school.
3. The board of directors or administrator of an agency called upon by a school official to provide services in an educational capacity to students.
4. An employee of any residential institution, not currently covered by Iowa Code chapter 232, providing educational services.

School employees are of two classes: certificated (licensed) and noncertificated (unlicensed). A certificated employee holds an Iowa teacher's certificate issued by the department of education or a license issued by the state board of educational examiners.

COMMENT: The term "school employee" is broadly defined to include all persons who serve students in a school or instructional setting. It covers volunteers who act on behalf of the school at the direction of the school board or authorities in charge.

The only school employees who would not be covered by the definition are those persons who are caretakers, as defined by the child abuse laws of Iowa, and therefore subject to the Department of Human Services. For example, a parent who drives a bus or teaches in the classroom and who physically or sexually abuses his or her own child at home or at school would be investigated by DHS under the child abuse statutes. That same bus driver or teacher who abuses a student, not his or her own child, would be covered by these rules rather than be subject to a DHS investigation. These rules are designed to cover non-caretaker abuse situations.

An AEA social worker, psychologist, or other employee who provides direct services to children is a "school employee" under number 3. Those workers at the School for the Blind and School for the Deaf who provide direct educational services are subject to this policy under number 4 above, but employees who provide only residential care would presumably fall under the jurisdiction of DHS.

Finally, schools and community colleges that offer day care to preschool children and employ staff to fulfill that purpose are "school employees" governed by these rules. However, schools that only house the facilities for day care programs licensed by the Department of Human Services need not follow these rules if the schools do not employ the day care workers; those persons would be subject to DHS child abuse investigations.

"Student" means a person enrolled in a public or nonpublic school or a prekindergarten program in a public or nonpublic school established under Iowa law, a child enrolled in a day care program operated by a public school or merged area school under Iowa Code section 279.49, or is a resident between the ages of 5 and 21 of a state facility providing incidental formal education.

COMMENT: "Student" under these rules, is a broader definition than the juvenile code definition of a "child" (unmarried person under age 18); all students in educational programs are covered regardless of age. For example, special education law allows for services to infants and toddlers and for continued services to identified students to the age of 21 and possibly beyond in some circumstances. Children in day care programs run by schools (not licensed by DHS) are "students" under the rules.

281--102.3(256) Jurisdiction. To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the report must include basic information showing that the victim of the alleged abuse is or was a student at the time of the incident, that the alleged act of the school employee meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

COMMENT: Not every allegation of abuse requires an investigative response by the school or district. The main factors to be considered are listed in the rule. First, in allegations of physical abuse, injury to the student is required. Physical contact that does not result in physical injury is not required to be investigated under these rules. The school or district would thus have no obligation to follow these rules in an investigation if there is neither evidence nor allegation of injury. Sexual abuse, because it is so broadly defined, will most likely be investigable regardless of the severity of the alleged conduct, assuming the allegation is one of sexual abuse or inappropriate intentional sexual behavior.

Second, the alleged victim must meet the definition of a student at the time the incident occurred, but note that a school has a duty to investigate when a former student is the alleged victim unless the school employee named in the charging report is no longer employed by the school or district.

There is no "statute of limitations" in these rules. Of course, the more remote in time the occurrence, the more difficult the investigation due to normal memory loss, absence of witnesses, etc.

The most difficult item to be determined as part of establishing jurisdiction is the "school-related context." Some examples may be helpful. For instance, an allegation is made that a high school teacher, who is also a scout leader, has physically or sexually abused a child of nine or ten on a scout trip or outing. The teacher has never had the child in class, has never taught in the same building as the child attended, and the only connection between the two is the scout leader-scout relationship. This is most likely not a "school-related context." (The adult may, however, be subject to an investigation by DHS because the child abuse statute defines caretaker to be anyone with whom the child resides, regardless of the duration of the stay.) Of course, the fact that the school may decide there is no jurisdiction to investigate does not mean that there will be no follow-up or employment consequences if the employee is found to have committed a criminal act or child abuse.

On the other hand, a situation may arise where a ninth grade student may visit the home of a teacher the student studied under some years before, and if it is alleged that an incident of abuse took place in that context, the charging report would most likely be investigable. The relationship between the teacher and student appears to have arisen out of a school context.

Another example might be that a school bus driver is alleged to have abused a child who resides in the same neighborhood as the driver. If the child doesn't ride the neighbor's bus and there is no suggestion that the incident or conduct or relationship was the result of the driver's employment, it is probably not a "school-related context" but rather a matter for investigation by law enforcement. The Committee suggests that the test to be applied to determine "school-related context" is "But for the school connection, the relationship between school employee and student would not exist."

Although a report or allegation may not be investigated under these rules, there may still be a valid reason for following up on the allegation for purposes of employment, by referring the reporter to law enforcement or by the level-one investigator contacting law enforcement, and awaiting the outcome of that investigation. If a school employee is determined to have physically or sexually assaulted a child in a non-school-related context, the school or district would be advised to consult with legal counsel on the advisability of disciplinary action even though the school did not conduct the investigation or was not responsible to investigate. The same statement is true if a parent, student or other reporter chooses not to utilize the school's investigative process at all, but rather goes directly to law enforcement with a complaint.

281--102.4(256) Exceptions.

102.4(1) The following do not constitute physical abuse, and no school employee is prohibited from using reasonable and necessary force not designed or intended to cause pain:

a. To quell a disturbance or prevent an act that threatens physical harm to any person.

b. To obtain possession of a weapon or other dangerous object within a pupil's control.

c. For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.

d. For the protection of property as provided for in Iowa Code section 704.4 or 704.5.

e. To remove a disruptive pupil from school premises or from school-sponsored activities off school premises.

f. To prevent a student from the self-infliction of harm.

g. To protect the safety of others.

COMMENT: The determination by the level-one investigator that "it is likely that an incident took place between the student and the school employee" (see 102.8(5)) does not include consideration of these exceptions; their applicability is to be determined by the level-two investigator.

The application of the exceptions is also contingent upon reasonableness under the particular circumstances of each incident, as elaborated upon below. The essence of the exceptions is to acknowledge limited circumstances where an employee may exercise physical force, perhaps even resulting in injury to the student.

For example, if a school employee sees a fist fight in the hall, he or she would be legally privileged to use physical force to separate the fighting students, so long as the purpose of the force is not to cause pain. Such force might take the form of pushing or pulling students apart, or physically restraining one or more of the students. Should a student be injured, i.e., he or she is accidentally scratched or receives an inadvertent poke in the eye, or hits his or her head on the floor or a wall, the level-two investigator would approach the investigation by first reviewing the surrounding circumstances to decide whether any of the "exception" circumstances or privileges exist. In the instant example, exceptions "a," "c," or "g" may be applicable. However, a determination must still be made as to whether the force used was reasonable under the circumstances. See 102.4(2). The referenced sections of the Iowa Code are found at Appendix G of this Model Policy.

102.4(2) In determining the reasonableness of the force used, the following factors shall be considered:

a. The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.
b. The size and physical condition of the student.
c. The instrumentality used in making the physical contact.
d. The motivation of the school employee in initiating the physical contact.
e. The extent of injury to the student resulting from the physical contact.

COMMENT: These factors are all to be considered, although an Iowa Supreme Court case involving the former privilege of corporal punishment established that the most important factor is (d). Factor "a" is somewhat reflected in the circumstances surrounding the force used, as determined in 102.4(1) above. Factor "b" asks the level-two investigator to look at the size and condition of the student presumably as compared to the size and condition of the named school employee(s) exerting the

physical force. Factor "c" asks the investigator to consider the means used, physical strength or some instrument or weapon.

The most important factor, "d," seeks to show what motivated the school employee. If the employee's actions in using physical force were motivated by anger, that fact may mitigate against a finding of "reasonable and necessary force." (However, the fact that an employee became angry or upset in the course of dealing with a situation would not lead to the automatic conclusion that the force used was unreasonable or unnecessary under the circumstances.) The key is, simply, whether the motivation for the use of physical force was to punish a student (inappropriate use of force) or for one the privileged reasons listed in subrule 102.4(1).

Factor "e" recognizes that the seriousness of the injury often gives a clue as to the reasonableness of the force used. However, it is important to bear in mind that it is possible for extraordinary injury to result from minor force. For example, a student could land on his or her hand in such a way as to break the hand, even though the employee's force (to continue an earlier example) in separating quarreling or fighting students might not have been unreasonable or excessive. On the other hand, restraining a student in such a manner as to, for instance, dislocate or break a shoulder could be deemed excessive, depending upon the circumstances. It is also possible that a student's resistance to being calmed or separated can contribute to the injury. All of these possibilities and those peculiar to the incident should be considered in determining the reasonableness of the force used in the specific circumstances being investigated.

281--102.5(256) Duties of school authorities. The board of directors of a public school district and the authorities in control of a nonpublic school shall:

102.5(1) Annually identify at least one designated investigator and alternate investigator at an open public meeting.

102.5(2) Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney's office, personnel of the local office of the department of human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator shall not be a school employee, and shall be considered an independent contractor if remunerated for services rendered.

The adopted procedures shall conform to these rules and shall include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions shall include the options of:

a. Temporary removal of the student from contact with the school employee.

b. Temporary removal of the school employee from service.

c. Any other appropriate action permissible under Iowa law to ensure the student's safety.

The adopted written procedures shall include a statement that the investigators appointed and retained under this chapter shall have access to any educational records of a student who is the named victim of alleged abuse, and access to the student for purposes of interviewing and investigating the allegation.

102.5(3) Annually publish the names and telephone numbers of the designated investigator and alternate:

a. In the student handbook,

b. In a local newspaper of general circulation, and

c. Prominently post the same information in all buildings operated by the school authorities.

102.5(4) Arrange for annual in-service training for the designated investigator and alternate in investigating reports of abuse of students.

COMMENT: A regular, open board meeting is sufficient to meet rule 102.5(1). We recommend that the designated investigator and alternate be of opposite sexes. A district may designate several investigators or alternates.

An officially adopted board statement is the preferred method of establishing school policy. Individual names are not necessary, and if used in the policy would require its revision every time the school or district changed investigators at either level one or two.

Because the level-two investigator cannot be an employee of the school or school district, he or she will not be covered by the school's insurance. In addition, other persons employed by law enforcement or the Department of Human Services, for example, and "moonlighting" as your level-two investigator will also not likely be covered by their employer's insurance. This should not be of significant concern to the school or district; it is the level-two investigator's responsibility to insure him- or herself for errors and omissions or malpractice. A professional, licensed, self-employed investigator is likely to carry insurance to cover contingencies. A list of state licensed investigators, as of October 1989, appears as Appendix E to this Model Policy. Please recognize that the State Board of Education, Department of Education, its employees and the members of the Model Policy committee, do not express any opinion as to the qualifications of any individual on the list to be retained by the school or district. The Committee recommends that resumes are obtained and references verified prior to retaining any individual as a level-two investigator. (Please refer to the qualifications set out in rule 102.5(2).) The list is supplied solely to provide assistance in locating a licensed private investigator, should that be the school's preference. The person retained at level two

need not be trained by the school or district because he or she must have a background, training and experience in investigating physical and sexual abuse.

The balance of this subrule requires that the policies adopted be consistent with these rules; address legitimate actions to be taken to protect students pending or following investigation, at the discretion of the designated investigator; and allow level-one and level-two investigators access to students and employees for purposes of investigation, and to an alleged student victim's educational records as well. The purpose behind the records access is to provide the investigator with background on the student, to know whether he or she has disabilities or handicaps, or other relevant facts that the investigator should be aware of before talking with the child. To protect the school fully, parental or eligible student (18) permission should be obtained before giving records access to the level-two investigator or any law enforcement personnel; the level-one investigator, if a school employee, already has the right of access so long as the access is to fulfill a legitimate educational purpose.

The school board or authorities are also annually to publish the names of the designated investigator and alternate in the student handbook and a local newspaper, and post the same information in all school buildings. The annual training required of the level-one investigator is the responsibility of the school or district.

[NOTE: At the time of this publication, a training videotape was being prepared by the Department of Education and the Division of Criminal Investigation, Department of Public Safety. The training film will focus on investigative and interviewing techniques. Viewing of this film is encouraged to fulfill the training requirement of 102.5(4), but is not mandatory. Other training methods may be substituted or required by a school or district in addition to the viewing of the videotape.]

281--102.6(256) Filing of a report.

102.6(1) Who may file. Any person who has knowledge of an incident of abuse of a student committed by a school employee may file a report with the designated investigator.

102.6(2) Content of report. The report shall be in writing, signed, and witnessed by a person of majority age, and shall contain the following information:

a. The full name, address, and telephone number of the person filing.

b. The full name, age, address, telephone number, and attendance center of the student.

c. The name and place of employment of the school employee(s) or agents who allegedly committed the abuse.

d. A concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.

e. A list of possible witnesses by name, if known.

f. Names and locations of any and all persons who examined, counseled or treated the student for the alleged abuse, including the dates on which those services were provided, if known.

102.6(3) Incomplete reports. The designated investigator shall aid parties requesting assistance in completing the report. An incomplete report shall not be rejected unless a reasonable person would conclude that the missing information which is unable to be provided by the reporter, would render investigation futile or impossible. An unsigned (anonymous) or unwitnessed report may be investigated, but the designated investigator then has no duty to report findings and conclusions to the reporter.

COMMENT: Although no person is required to utilize this process to report suspected abuse of students, reporting is encouraged. A competent, confidential investigation will usually bring finality and closure to hearsay and rumor. The trust of the public as well as of employees of the school or district will be earned when an investigation is handled promptly, thoroughly, and equitably. Just as students should not have to suffer abuse by school employees, employees should not have to suffer from false or groundless accusations. These rules are intended to strike a balance between the rights of victims to a speedy resolution of investigation and cessation of the offending actions, if any, and the rights of the accused school employees to a speedy resolution of an investigation by competent and professional persons, not in the "court of public opinion" or the media.

Consequently, anonymous complaints are discouraged -- so much so that they are not required to be investigated. An adult must witness the report (even if the reporter is also an adult) to discourage vexatious or frivolous reports. [NOTE: The "witness" requirement of rule 102.6(2) is not necessarily that of a witness to the incident, but rather a witness to the signature of the person filing the report.]

If the person reporting does not read or write or is not fluent in English, the designated investigator is to assist the reporter and not discourage or otherwise deter the person from making the report.

One example of an incomplete report that would "render investigation futile or impossible" is a report of physical abuse missing the name of the student victim or the accused school employee, without clues to discovering his or her identity. A report of sexual abuse, where there is seldom a

witness anyway, that is missing the name of the school employee, and which provides insufficient information to determine who the alleged perpetrator is or was, would also render investigation futile or impossible. Discretion of the designated investigator is encouraged in determining whether an investigation is possible given the bare data supplied in an incomplete report.

281--102.7(256) Receipt of report. Any school employee receiving a report of alleged abuse of a student by a school employee shall immediately give the report to the designated investigator or alternate and shall not reveal the existence or content of the report to any other person.

COMMENT: No comment is deemed necessary.

281--102.8(256) Duties of designated investigator -- physical abuse allegations.

102.8(1) Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing, to the student's parent or guardian if different from the person filing and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control.

102.8(2) Within 5 school days of receipt of a report of physical abuse, the designated investigator shall conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 102.3.

102.8(3) If, in the investigator's opinion, the magnitude of the allegations in the report suggest immediate and professional investigation is necessary, the designated investigator may temporarily defer the level-one investigation. In cases of deferred investigation, the investigator shall contact appropriate law enforcement officials, the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, documenting in writing the action taken.

102.8(4) The investigator shall interview the alleged victim, the school employee named in the report, and any collateral sources who may have knowledge of the circumstance contained in the report. The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.8(5) The designated investigator's role is not to determine the guilt or innocence of the school employee or the applicability of the exceptions listed in rule 102.4. The designated investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee, whether or not it rises to the level of "abuse" as defined by these rules. However, if the complaint has been withdrawn, the allegation

recanted, or the employee has resigned, admitted the truth of the allegations, or agreed to relinquish the employee's teachers certificate or license, the designated investigator may conclude the investigation at level one.The designated investigator shall follow the applicable provisions of 102.11(2) and (3) when resolution occurs at level one.

The second-level investigator appointed, contracted, requested or retained under subrule 102.5(2), when called upon for further investigation, shall consider the applicability of the exceptions listed in rule 102.4 in reaching conclusions as to the occurrence of abuse as defined by these rules.

102.8(6) Within 15 calendar days of receipt of the report, the designated investigator shall complete a written investigative report, unless investigation was temporarily deferred.

COMMENT: Although the creation of copies of the report decreases the likelihood of maintaining confidentiality, we believe the persons who are to receive copies each have a right to them. The accused employee receives a copy at the time he or she is interviewed by the designated investigator, but if a collective bargaining agreement (master contract) or individual contract requires that an employee be immediately notified if a complaint is ever filed against him or her, the designated investigator shall honor that term of the contract and provide a copy to the employee immediately. Under those circumstances, it is recommended and encouraged that the designated investigator proceed to question the accused school employee even before talking with the alleged victim, or establishing jurisdiction. (Generally recognized investigative technique provides that little or no notice is given to an accused person prior to being interviewed. This is to the benefit of the innocent as well as to the detriment of the guilty.)

Under the United States Supreme Court decision in Weingarten, the named school employee (if covered by a collective bargaining agreement) has the right to have an association representative present during the interview with the designated investigator if it is reasonable for the employee to assume he or she may be disciplined as a result of the action being investigated. At this time there appears to be no legal duty to advise the employee of his or her Weingarten rights. Clearly, however, an employee being investigated for misconduct may not be denied the presence of a union representative during questioning.

Although the underlying circumstances of an investigation may subject the school employee to criminal charges, there is no duty at this time for the designated investigator to inform an accused school employee of his or her "Miranda rights." Miranda and its progeny require informing an accused of his or her rights only in an in-custody interrogation setting. Because the designated investigator is not a peace officer, he or she has no authority to take the accused into official custody;

the employee is free to go and need not answer any questions. Even if a law enforcement representative is used at level two, the Miranda warning is not necessary unless the employee is being questioned subsequent to arrest. Miranda rights attach only when the school employee is questioned by law enforcement under circumstances where he or she is the focus of the investigation and it is reasonable for the employee to believe he or she is not free to leave the premises.

If the student has been examined by a doctor or other professional, the designated investigator will need to obtain the consent of the student or parent/guardian to talk with the doctor.

With respect to the timing of employee resignations (concluding the investigation at level one), the committee believes that an immediate resignation is desirable. However, there may be situations where it is reasonable that a resignation is immediately submitted but effective at a later date. Certainly a resignation arising out of abusive conduct should be effective during the contract year, and the most serious incidents would warrant immediate resignation. In cases where an employee resigns but declines to admit the truth of the allegations or to surrender his or her certificate or license, the designated investigator has discretion to file a licensure complaint against the employee. See rule 102.11 and the comments thereunder. The decision shall be made based upon whether the investigator has a good faith belief that abuse occurred.

Note that the designated investigator's duties after receiving an allegation of physical abuse are, in chronological order:

a. Make and distribute required copies;

b. Determine "jurisdiction" under rule 102.3;

c. Decide whether the allegation is serious enough to justify deferral of the investigation (if so, defer, document action taken, and notify proper persons);

d. If not deferred, investigate within five school days; interview alleged victim, named employee, witnesses, etc.;

e. Determine whether the report is founded ("It is likely," by a preponderance of the evidence, "that an incident took place" between the school employee and the student) or groundless (either the weight of the evidence was insufficient to conclude an incident took place, or there was no evidence that an incident took place).

f. Complete investigative report (see 102.10);

g. Maintain the original and give copies of the report to the student's parent or guardian and accused school employee in all cases; notify person filing the report (complaint), if different from parent or guardian, of the conclusion of the level-one investigation and what the anticipated next step

will be, if any. (Non-parent/guardian reporter does not receive a copy of the investigation report.) Confidentiality is not breached by filing a complaint with the state board of educational examiners or by acknowledging, upon being contacted in the future as a reference for the named employee, that a complaint was filed against the employee.

281--102.9(256) Duties of designated investigator -- sexual abuse allegations.

102.9(1) Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing and to the student's parent or guardian if different from the person filing. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control.

102.9(2) Upon receipt of a report of sexual abuse or other notice of an allegation of sexual abuse, the designated investigator shall review the facts alleged to determine that the allegations, if true, support the exercise of jurisdiction pursuant to 102.3 of these rules.

102.9(3) The investigator shall interview the alleged victim as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may contact the student's parent or guardian prior to interviewing the student, but shall conduct the interview with the student in the absence of the student's parent or guardian. The investigator may record the interview electronically.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.9(4) The designated investigator's role is not to determine the guilt or innocence of the school employee. The designated investigator shall determine, by a preponderance of the evidence and based upon the investigator's training and experience and the credibility of the student, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the truth of the allegation, or agreed to relinquish the employee's teachers certificate or license, the designated investigator may conclude the investigation at level one. The designated investigator shall follow the applicable provisions of 102.11(2) and (3) when resolution occurs at level one.

102.9(5) If, in the investigator's opinion, it is likely that an incident in the nature of sexual abuse as defined by Iowa Code chapter 709 or section 728.12(1) took place, the investigator shall temporarily defer further level-one investigation. In cases of deferred investigation, the investigator shall immediately contact appropriate law enforcement officials, notifying the student's parent or guardian, and the person filing the report, if different from the student's parent or guardian, of the action taken.

If, in the investigator's opinion, an incident occurred that would not constitute sexual abuse as defined in Iowa Code chapter 709 or sexual

exploitation as defined by Iowa Code section 728.12(1), but that was in the nature of inappropriate, intentional sexual behavior by the school employee, further investigation is warranted. The investigator may proceed to interview the school employee named in the report and any collateral sources who may have knowledge of the circumstance contained in the report, or may arrange for the level-two investigator to carry out a professional investigation.

If, in the investigator's opinion, the allegation of sexual abuse is unfounded and further investigation is not warranted, the investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the school employee named in the report of this conclusion in a written investigative report.

102.9(6) Within 15 calendar days of receipt of the report or notice of alleged sexual abuse, the designated investigator shall complete a written investigation report unless the investigation was temporarily deferred.

COMMENT: The processing of a sexual abuse allegation differs from that of a physical abuse allegation. The making and distributing of copies of the complaint report is the same, however. The deviation comes as the designated investigator begins the investigation.

If the allegation is one of a sex crime (see Appendix F), the designated investigator interviews only the alleged victim.[1] Note that no parent or guardian is permitted to sit in on the interview. This requirement may upset some parents, and we normally strive to reduce a student's anxiety over discussing such matters by allowing a parent to emotionally support the child by his or her presence. However, professional law enforcement personnel strongly discouraged the conducting of an interview of an alleged sexual abuse victim with a parent or guardian present for a variety of reasons. Some of these reasons pertain to the child's credibility, potential intimidation, or other reactions from parents that could affect the child's relating of the events surrounding the complaint.

The "no-parent-present" rule does not mean, however, that the level-one investigator could not permit the child's teacher, counselor, or someone else with whom the child feels comfortable to attend the interview so long as that person was not the reporter and has not had previous discussions with the student about the situation. Moreover, that person, if allowed to sit in on the interview, should not ask questions of the student but rather serve as a friend, supporting and encouraging the student to tell the truth and not to be afraid.

---

[1] The rules anticipate that an employee is not given notice of the allegation until he or she is interviewed. In statutory sexual abuse, the rules do not mention interviewing the named employee at level one. This procedure may be altered if the named employee is covered by a master contract that includes language requiring immediate notice to employees of any complaints filed against them. In such cases, the designated investigator may wish to go ahead and interview the employee at the time he or she is given a copy of the complaint report, or may wish to contact law enforcement to assist in the interview. Otherwise, the employee receives notice of the allegation but may not be contacted by law enforcement for several hours or more. This is not good practice.

The option (but not requirement) exists for the interview of the student to be recorded electronically, with video or audio tape. The purpose behind this recommendation is three-fold: to free the designated investigator from constantly taking notes throughout the interview, which helps the questions and answers flow more smoothly; to preserve the student's early rendition of events; and to reduce the possibility that he or she will have to repeat the entire story a multitude of times.

Caution should be exercised if a videotape is used. The camera can be quite intimidating to some people and does not allow the interview participants much freedom of movement without moving out of the picture. (The presence of another person operating a camera can be very distracting and is thus discouraged.) Only if videotaping can be done unobtrusively should it be considered. The student should be informed of the audio-or videotaping activity at the outset of the interview. The designated investigators should make certain all equipment is functioning properly immediately prior to the interview. Some notes should be taken, particularly of points the investigator may wish to return to for follow-up questions.

The severely handicapped student who is the alleged victim of abuse presents, predictably, several potential problems. The designated investigator may wish to call in a specially trained person (from the school, AEA, or outside agency) to assist with the interview. If the student is capable of drawing pictures or pointing to body parts or acting out the incident, this can be accepted in lieu of or in addition to oral statements. Unfortunately, some severely handicapped children are nearly or completely incapable of assisting in an investigation, and this fact should be considered in weighing the evidence against a school employee.

Note that unless the employee has been interviewed (see footnote 1), the designated investigator will be making the level-one founded or unfounded determination in cases where statutory sexual abuse is alleged on the sole basis of an interview with the student. This, of course, places great weight on the credibility of the student's response to questions about the incident. All doubts at this point should be resolved in favor of the alleged victim. This means that most if not all allegations of statutory sexual abuse will be referred to law enforcement.

Although the ability exists to resolve the investigation at level one, no coercion should be applied to an employee in order to conclude the investigation at level one. Nor should an employee be urged to surrender a certificate, license, or permit; there may be situations where an incident of abuse, admitted by the employee, would not be so serious as to justify surrendering the certificate, license, or permit.

Note that the designated investigator's general duties after receiving an allegation of sexual abuse are, in chronological order, to

(a) Make and distribute required copies;

(b) Determine "jurisdiction" under rule 102.3;

(c) Interview alleged victim;

(d) Decide whether it is likely, by a preponderance of the evidence (report and victim interview), that an incident in the nature of statutory sexual abuse took place.

(1) If so, defer the investigation by contacting law enforcement, document, and notify proper persons. If not, proceed to complete the investigation at level one by conducting remaining interview of named employee and witnesses (unless the allegation has been withdrawn or recanted).

(2) If the allegation is not of statutory sex abuse but rather "in the nature of inappropriate, intentional sexual behavior," the investigation continues at level one or may be referred to the level-two investigator, unless resolved under the circumstances stated in rule 102.9(4).

(e) Complete investigative report or deferral notice, maintain original and provide copies to proper persons.

Refer to rule 102.11 for the duties of the designated investigator at the conclusion of the level-two investigation.

281--102.10(256) Content of investigative report. The written investigative report shall include:

1. The name, age, address, and attendance center of the student named in the report.
2. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
3. The name and work address of the school employee named in the report as allegedly responsible for the abuse of the student.
4. An identification of the nature, extent, and cause, if known, of any injuries or abuse to the student named in the report.
5. A general review of the investigation.
6. Any actions taken for the protection and safety of the student.
7. A statement that, in the investigator's opinion, the allegations in the report are either:
   a. Groundless, or
   b. Founded. (It is likely that an incident took place.)
8. The disposition or current status of the investigation.
9. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include, but are not limited to:
   a. Contacting law enforcement.

b. Contacting private counsel for the purpose of filing a civil suit or complaint.

c. Filing a complaint with the board of educational examiners if the school employee is certificated.

The investigator shall retain the original and provide a copy of the investigative report to the school employee named in the report and the named student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall be notified that the level-one investigation has been concluded, and of the disposition or anticipated disposition of the case.

COMMENT: Reporting forms are provided in Appendices A and B and may be reproduced for use by the school or district. A complaint form for the board of educational examiners is found at Appendix I.

281--102.11(256) Founded reports -- designated investigator's duties. The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under chapter 709 or sexual exploitation under section 728.12(1) of the Iowa Code. In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

Upon receipt of the level-two investigator's report under rule 102.12, or upon resolution of the investigation at level one the designated investigator shall:

1. Forward copies of the level-two investigator's report to the student's parent or guardian, the school employee named in the complaint, and the school employee's supervisor; notify the person filing the report, if different from the student's parent or guardian, of the disposition of the case or current status of the investigation.

2. File a complaint with the board in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules, or where the employee has admitted the truth of the allegation or agreed to surrender the employee's certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted the truth of the allegations; and

3. Arrange for counseling services for the student on request of the student, or the student's parent or guardian.

COMMENT:

Physical abuse. If the designated investigator concludes that it was likely that an incident took place between the student and the school employee (founded-level one) and the resulting injury was serious (i.e., broken bones, internal injuries, etc.), the designated investigator's duty is to notify law enforcement, either the local police/sheriff or the county attorney. (It is suggested that this be done regardless of whether or not the parent/guardian or other reporter has indicated that law enforcement has been notified.) This eliminates the necessity for referring the investigation to level two, and

places the case in the hands of professional law enforcement. Should law enforcement decline to pursue the investigation, however, the designated investigator should refer the case to the level-two investigator to bring closure to the investigation unless the investigation has been concluded because of conditions stated in rule 102.8(5)(i.e., the complaint has been withdrawn, the allegation recanted, the employee has resigned, admitted the truth of the allegation or agreed to relinquish his or her teacher's certificate or license [this term includes school bus driver permit]).

Thus, in a normal situation, the level-two investigator would only be called upon in founded cases of less serious physical abuse not resolved at level one.

Sexual abuse. Rule 102.9(5) establishes that the designated investigator in sexual abuse reports is to interview the alleged victim, review the allegation, and immediately determine, without further investigation, whether the act charged, if true, would be a sex abuse crime (see Appendix F), and if so, refer the investigation to law enforcement. This means (unless there is a term in the master contract or other binding agreement requiring a school official to notify a school employee immediately if a complaint is ever filed) that the level-one investigator only does a partial investigation; he or she does not notify the accused school employee of the complaint and does not attempt to contact witnesses if the accusation is of statutory sexual abuse (crimes).

Thus, most reports of sexual abuse will be referred to law enforcement ("deferred investigation") before the designated investigator has completed an investigation. As a result, the typical cases to be completely investigated by level one (and if founded, level two) will be those where sexual improprieties are charged, but no sex "crime" has been alleged. Example: teacher dating 17 year-old student; bus driver/janitor kissing student (romantically, not paternally or maternally); counselor making suggestive remarks to student; coach patting student on buttocks/"fanny" in a sexual way.

However, it may happen that a report is made of sexual impropriety that, if true, would not be a sex crime and is therefore fully investigated, but after the investigation facts come to light to indicate that it may well be more serious than the original report indicated; in fact it would be criminal sexual abuse. The intent of the rule is that regardless of the stage of investigation at which a determination is made that a criminal sex abuse situation may have occurred, at that point the investigation is turned over to law enforcement.

This rule also addresses what the designated investigator does after receiving the level-two investigator's report. In addition to providing copies of the report to the appropriate people, the level-one investigator must file a complaint with the State Board of Educational Examiners in cases of founded abuse as determined by the level-two investigator, law enforcement personnel, or the

level-one investigator under the circumstances in the rules allowing for conclusion of the investigation at level one (i.e., employee has admitted the truth of the allegation or agreed to surrender his or her certificate/license). There is no discretion except in cases where the employee has resigned voluntarily without admitting the truth of the allegations and without agreeing to surrender his or her license or certificate. Resignation "agreements" cannot waive the mandatory filing of a complaint with the State Board of Educational Examiners in cases of founded or admitted abuse. This requirement stems from the belief that an abusive professional should not be permitted to continue to hold a certificate or license only to move on to another district or school.

We believe the school's responsibility to other students and to the profession requires the notification of the State Board of Educational Examiners, who will conduct an investigation and may hold a hearing to determine licensure sanctions, unless the employee has already agreed to surrender his or her certificate/license.

The State Board of Educational Examiners only has jurisdiction over certificated members of the profession. A school bus driver's permit can be revoked by the Department of Education for criminal or otherwise abusive conduct, so the designated investigator is encouraged to contact DE in cases of founded abuse by holders of a school bus driver's permit. School nurses may be reported to the State Board of Nursing. At this time, abusive food service workers, custodians, and other non-licensed school employees would not be subject to actions other than those brought in the civil, criminal, and employment arenas.

With respect to the mandatory provision of counseling services ("3"), the intent is that counseling only becomes mandatory upon parental or student request, and school or AEA counseling services are intended, although a school or district would be free to go beyond this intent to offer community-based or other professional counseling at district expense if it so chooses. The school should consider whether its counselor(s) are qualified to provide this type of counseling services, and if not, may wish to consider arranging for outside counseling for the student. It would be helpful for each school to maintain a list of referral agencies in the area.

281--102.12(256) Level-two investigator's duties. Upon referral by the designated investigator, the level-two investigator appointed, contracted, requested or retained under subrule 102.5(2) shall review the report of abuse; review the designated investigator's report, if any; promptly conduct further investigation as deemed necessary; and create a written report. The level-two investigator's report shall state:

a. Conclusions as to the occurrence of the alleged incident; and

b. Conclusions as to the applicability of the exceptions to physical abuse listed in 102.4; or

c. Conclusions as to the nature of the sexual abuse, if any; and

d. Recommendations regarding the need for further investigation.

The written report shall be delivered to the designated investigator as soon as practicable.

The level-two investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the level-two investigator shall maintain the confidentiality of the report.

COMMENT: No form is provided for the level-two investigator's report, but he or she should be advised and given a copy of the rules, including what must be included in the report.

No specific time constraints are placed upon the level-two investigator's investigation and resulting report other than "as soon as practicable." Most investigations of this nature should be resolved within two to three weeks of the receipt of the level-one investigator's report, although extenuating circumstances may alter this time frame. A consistently slow level-two investigator should be considered for replacement. A school contracting with a level-two investigator may wish to add a term to the contract or agreement specifying a timeline for completion of the level-two investigation and report.

281--102.13(256) Retention of records. Any record created by an investigation shall be handled according to formally adopted or bargained policies on the maintenance of personnel or other confidential records. Notes, tapes, memoranda, and related materials compiled in the investigation shall be retained by the public or nonpublic school for a minimum of two years.

Unfounded reports shall not be placed in an employee's personnel file.

COMMENT: The level-one and level-two investigators will want to retain personal copies of their notes and reports in addition to the official school originals. The school maintains all evidence and should keep this for a minimum of two years.

Only founded reports may be placed in an employee's personnel file, but the rule does not require that they be placed in a personnel file at all. The disciplinary report or other employment consequences resulting from a founded report may be sufficient. All public schools must recognize the confidentiality of personnel records as established in Iowa Code chapter 22, which means that parents or non-employee reporters are not permitted to know what is in the accused's personnel file (such as reprimands, suspensions, etc.).

281--102.14(256) Effective date. These rules are effective on July 1, 1989, for school years 1989-90 and thereafter.

Final Comment: In developing these rules and corresponding advice and recommendations, the State Board of Education and Department of Education staff have attempted to develop a comprehensive, equitable and balanced investigative procedure. While the rules are mandatory, we recognize that abuse and complaint situations seldom allow for rigid procedures. Substantial compliance with these procedures is recommended, with the overriding goal of reaching a fair and unbiased resolution to an allegation of abuse of students by school employees.

APPENDIX A

"Report of Abuse of a Student"

REPORT OF INJURY OR ABUSE OF A STUDENT

Please complete the following as fully as possible. If you need assistance, contact the designated investigator in your school.

Student's name and address:

_____

_____

Student's telephone number: _____

Student's school: _____

Name and place of employment of school employee accused of abusing student:

_____

_____

Please describe what happened. Include the date, time, and where the incident took place, if known, and the nature of the student's injury, if any: _____

_____

_____

_____

_____

_____

Were there any witnesses to the incident? ____ yes ____ no

If yes, please list by name, if known, or classification (for example;" third grade class", "fourth period geometry class"):_____

_____

_____

Has any professional person examined or treated the student as a result of the incident? ____ yes ____ no ____ unknown

If yes, please provide the name and address of the professional(s) and the date(s) of examination or treatment, if known:_____

_____

_____

_____

Has anyone contacted law enforcement about this incident? ____ yes ____ no

Please provide any additional information you have which would be helpful to the investigator. Attach additional pages if needed.

_____

_____

_____

_____

_____

Your name, address, and telephone number:

_____

_____

_____

Relationship to student: _____

_____

_____

over

Signature: _____

Date: _____

Witness signature: _____

Witness name (please print): _____

Witness address: _____

Be advised that you have the right to contact the police or sheriff's office, the county attorney, a private attorney, or the State Board of Educational Examiners (if the accused is a teacher or holds a teacher's certificate) for investigation of this incident. The filing of this report does not deny you that opportunity.

You will receive a copy of this report, (if you are the named student's parent or guardian), and a copy of the Investigator's Report within fifteen calendar days of filing this report, unless the investigation is turned over to law enforcement.

APPENDIX B

"Report of Level-One Investigation"

REPORT OF LEVEL ONE INVESTIGATION

Student's name: _____

Student's age: _____

Student's address: _____

Student's school: _____

Name and address of person filing report: _____

_____

Name and address of student's parent or guardian, if different from person filing report:

_____

_____

Date report of abuse was filed: _____

Name and work address of school employee named in report: _____

_____

____ physical ____ sexual

Describe the nature, extent, and cause of the student's injury, if any and if known: (Attach additional pages if needed).

_____
_____
_____
_____
_____
_____
_____
_____

Describe your investigation: (Attach additional pages if needed)_____
_____
_____
_____
_____
_____
_____
_____
_____

Were audio tapes made of any interviews? ____ yes ____ no

Were video tapes made of any interviews? ____ yes ____ no

over

Was any action taken to protect the student during or as a result of the investigation? ____ yes ____ no
If yes, describe:

____ student excused from school
____ student assigned to different class
____ school employee placed on administrative or other leave
____ other (please specify)

Investigator's conclusions:

_____The allegation is groundless; it is reasonable to believe that no incident of abuse occurred between the school employee and the student.

_____ The allegation is founded; it is likely that an incident took place between the school employee and the student.

_____ School investigation was deferred and referred to law enforcement or other (please specify).

Disposition or current status of the investigation.

_____ Complaint was withdrawn.
_____ No further investigation is warranted.
_____ Further or professional investigation is warranted.
_____ Case has been or will be turned over to level two investigator.
_____ Case has been or will be turned over to law enforcement.
_____ Disposition unknown due to deferral and referral.

Other comments:

I have given a copy of the report of abuse and of this investigative report to the person filing the report (if he or she is the student's parent or guardian) and informed the person filing the report of the options of contacting law enforcement, private counsel, or the State Board of Educational Examiners, if the accused school employee holds an Iowa teacher's certificate or license.

_____
Name of investigator (please print)

_____
Signature of investigator

_____
Investigator's place of employment

_____
Date

APPENDIX C

Chapter 102 Complaints

1989-90

APPENDIX C
1989-90
CHAPTER 102 COMPLAINTS

School District _____

Address _____

_____

Level One Investigator's Name _____

Address _____

_____

Title / Position _____

Number of formal complaints filed, school year 1989-90 _____

Number of complaints alleging physical abuse _____

Number of complaints alleging sexual abuse _____

Number of complaints rejected for lack of jurisdiction _____

Number of complaints founded at level one _____

Number of complaints founded at level two _____

Number of unfounded complaints at level one and two _____

Number of complaints resolved at level one: _____

by resignation alone _____

by admission alone _____

by admission and resignation _____

by withdrawal _____

by recantation _____

COMMENTS

Please summarize, in your own opinion, the nature of the unfounded complaints. Specifically, we would like to know whether those were unfounded because they were totally false or because there was not a preponderance of the evidence to support the allegation.

Also, please feel free to comment on the effectiveness of the reporting and investigation process, and make recommendations for improvement. You may use the back of this form or attach a separate sheet. Thank you.

APPENDIX D

Chapter 102 Complaints

1990-91

APPENDIX D
1990-91
CHAPTER 102 COMPLAINTS

School District _____

Address _____

_____

Level One Investigator's Name _____

Address _____

_____

Title / Position _____

Number of formal complaints filed, school year 1990-91 _____

Number of complaints alleging physical abuse _____

Number of complaints alleging sexual abuse _____

Number of complaints rejected for lack of jurisdiction _____

Number of complaints founded at level one _____

Number of complaints founded at level two _____

Number of unfounded complaints at level one and two _____

Number of complaints resolved at level one: _____

by resignation alone _____

by admission alone _____

by admission and resignation _____

by withdrawal _____

by recantation _____

COMMENTS

Please summarize, in your own opinion, the nature of the unfounded complaints. Specifically, we would like to know whether those were unfounded because they were totally false or because there was not a preponderance of the evidence to support the allegation.

Also, please feel free to comment on the effectiveness of the reporting and investigation process, and make recommendations for improvement. You may use the back of this form or attach a separate sheet. Thank you.

APPENDIX E

List of Iowa Licensed Investigators

Iowa Licensed Investigators
(License issued by Iowa Department of Public Safety)

The following Iowa persons or agencies have been issued investigative licenses by the Department of Public Safety in accordance with Iowa Code chapter 80A.

NOTE: The holding of an investigator's license does not necessarily mean the individual or agency has the background, experience and training in investigating physical and sexual abuse required by the rules and Model Policy. Schools are strongly urged to obtain resumes and confirm references prior to retaining any individual as a level-two investigator.

This list is provided only for assistance in locating a level-two investigator. The Department of Education makes no judgments or attestations to the qualifications of the listed persons to serve as level-two investigators by the publication of this list.

Meredith Irvin	P.O. Box 2273	Davenport	52809
FBG Service Corp.	407 S. 27th Ave.	Omaha, NE	68131
Pinkerton, Inc.	205 Shops Bldg.	Des Moines	50309
Leroy Ralston	P.O. Box 723	Burlington	52601
Theodore Carr	4721 S.W. 14th St.	Des Moines	50302
Jerry Grinder	4701 S.W. 6th	Des Moines	50315
Wells Fargo Guard Services	6818 Grover St., Suite 300	Omaha, NE	68106
Midland Security	924 First Ave., N.W.	Cedar Rapids	52405
Danguard, Inc.	1512 Davenport	Omaha, NE	68108
Per Mar Security & Research, Corp.	P.O. Box 4227	Davenport	52808
Frank Grell & Wayne Siders	1000 E. Second Ave.	Coralville	52241
Howard Owen	520 Insurance Exchange Bldg.	Sioux City	51101
Two Star Detective Agency, Inc.	76-16th Ave., S.W.	Cedar Rapids	52404
Silia Smiley	P.O. Box 10320	Bettendorf	52722
Richard York	3422 Dunham Dr., S.W.	Cedar Rapids	52404
John Jontz	5115 Urbandale Ave.	Des Moines	50310
Ellsworth Gustafson	5917 S.E. 6th Ave.	Des Moines	50317
Nancee Mansan	P.O. Box 7185	Omaha, NE	68107
Nye & Associates, Inc.	1400 Dean Ave.	Des Moines	50316
Michael Williams	5633 Colorado Dr., S.W.	Cedar Rapids	52404

Larry Adams	812 1/2 Story St.	Boone	50036
Bailey's, Inc.	1427-8th Ave., S.E.	Cedar Rapids	52403
Gloria Roeder	949 Payton	Des Moines	50315
Commercial-Industrial Security	Professional Arts Bldg.	Davenport	52803
Investigative Services, Inc.	2801 Fleur Drive	Des Moines	50321
Gordon Gratias	603 Equitable Bldg.	Des Moines	50309
Building Maintenance Service	304-15th, Suite 200	Des Moines	50309
Charles Cushing	2745 Oak Crest Drive	Dubuque	52001
Trial Resources, Ltd.	705 E. 41st, Suite 230	Sioux Falls, SD	57105
John White	P.O. Box 831	Rock Island, IL	61204
Bi-State Security Service, Inc.	807 Kahl Bldg.	Davenport	52801
Edward Krueger	795 Lowell St.	Dubuque	52001
Christianson Investigations, Inc.	10274 Saratoga	Omaha, NE	68134
Lonnie Hamby	123 S.E. Kirkwood	Des Moines	50315
American Security	4820 Dodge St.	Omaha, NE	68132
V.L. Polygraph, Ltd.	7921 Douglas Ave.	Des Moines	50322
Osumana Cassell, Sr.	1540 Spyglass Hill, N.E.	Cedar Rapids	52402
Nighthawk Detective Agency	81 N. Center Point Road	Hiawatha	52233
David Butler	Cedar River Tower	Cedar Rapids	52401
W. Russell Casson, III	3901 S.W. 42nd St.	Des Moines	50321
Gerald Trowbridge	20946 Hwy. 52 N.	Durango	52039
Baker & Associates	535 N. 87th St.	Omaha, NE	68114
J & I Polygraph	958 E. 53rd St., 5B	Davenport	52807
Geoffrey Thomas	P.O. 4864	Des Moines	50312
Evan Phillips	811 S.E. Diehl Ave.	Des Moines	50315
Wells Fargo Amored Service, Corp.	700 Nebraska St.	Sioux City	51102
Neighborhood Patrol, Inc.	P.O. Box 2267	Des Moines	50310
William Simpson & Gary Davenport	1901 Broadway, Suite 105	Iowa City	52240

Bobby Baker	P.O. 684	Des Moines	50303
Kirk Dau	3402 Jewel Dr.	Ames	50010
Ralph Lindhorst	610 S. Dodge	Algona	50511
Larry Orser	417 S.W. Westlawn	Ankeny	50021
Kimm Nielsen	2609 S. St. Mary's	Sioux City	51106
Robert Jones	1211 Pershing Blvd.	Clinton	52732
Stephen Ahrens	RR 1, Box 85A	Clare	50524
Victor Laughlin	2307 Falls Ave.	Waterloo	50704
Burns Int'l. Security Age	2435 E. Kimberly Rd.	Bettendorf	52722
Central States	1123 Army Post Rd.	Des Moines	50315
James Mazour	2507-62nd St.	Des Moines	50322
Hawkeye Detective Agency, Inc.	RR 5	Iowa City	52240
Patrick Grant	10 1/2 Main St.	Britt	50423
Curtis Hustrulid	4413 Natalia Way	Sioux City	51106
George Lindblade	Baxter Bldg, 5th & Jones	Sioux City	51102
Robert Callaway	P.O. Box 186	New Providence	50206
James Marshall	P.O. Box 3005	Clinton	52732
Mark Shechet	3419 Viking Dr.	Sioux City	51104
Timothy Mulloy	Suite 206	Sioux Falls, SD	57102
William Kidwell	1901 Broadway, Suite 106	Iowa City	52240
Billy Barbee	502 Davidson Bldg.	Sioux City	51106
Silverhawk Investigations, Inc.	256 N. 115th, Suite 1B	Omaha, NE	68503
OSS Security Services, Inc.	Suite 205, Security Bldg.	Dubuque	52004
Merrill Security, Inc.	RR 3	Albia	52531
Dave Weis	840 Lawther	Dubuque	52001
Clinton Dishman	36 Dillman Dr., #5A	Council Bluffs	51501
Guard Systems, Ltd.	P.O. Box 324	Charles City	50616
Whelan Detective Agency, Inc.	5334 S. 99th St.	Omaha, NE	68127

Building Security, Inc.	P.O. Box 855	Des Moines	50309
James Kidwell	1227 Glenwood Dr., N.W.	Cedar Rapids	52405
Harlan Phillips	P.O. Box 1333	Muscatine	52761
Michael Merrill	RR 5, Box 12A	Council Bluffs	51501
Security World, Inc.	P.O. Box 2414	Davenport	52809
Continental Legal Investagators, Inc.	1100 Fleming Bldg.	Des Moines	50309
USCO Industries, Inc.	2303 S.W. 9th St.	Des Moines	50315
Robert Cairns	501 N. Wilson	Jefferson	50129
Raymond Miller	1602 Carrie Ave.	Des Moines	50315
George Achermann	927 Rundell St.	Iowa City	52240
Public Safety Group, Inc.	317 6th, Suite 810	Des Moines	50309
Lynn Roberts	111 W. Van Buren	Centerville	52544
Progard, Inc.	P.O. Box 1224	Dubuque	52001
Presti & Presti Investigators	2024 N.W. 92nd Ct.	Des Moines	50322
Robert Lacy	4008 Madison St.	Sioux City	51108
Clarence M. Kelly & Assoc.	4041 Central	Kansas City, MO	64111
Robin Horkey	P.O. Box 306	Winterset	50273
Louis Aten	627 East End Ave.	Evansdale	50707
Dennis Schnedler	510 Jefferson St.	Burlington	52601
Knight Security Agency, Inc.	1205-25th	Des Moines	50311
Matthew Solon	P.O. Box 1873	Council Bluffs	51502
James House Investigative Services	4601 Kingman	Des Moines	50311
Jerald Lewis	2024 N.W. 92nd Ct.	Clive	50322
Bruce Mortvedt	103 Hazel Ave.	Story City	50248
Cleatus Leaming	2941 Hubbell Ave.	Des Moines	50317
Gary Pratt	123 N. Vine	West Union	52175
David Nunn	4323 Grand Ave., #320	Des Moines	50312
Raymond Cornell	1507 Chatauqua Pkwy.	Des Moines	50314

Diversified Security	3707 S.W. 28th St.	Des Moines	50321
Richy Cairns	512 E. Walsh	Centerville	52544
Lann Abeltins	2050 Grand Ave.	Des Moines	50312
Gerald Dolf	615 S. Main	Danville	52623
James McDonald	744-17th	Des Moines	50314
H. Zene Kempf	P.O. Box 901	Washington	52353
Robert Thorpe	3019 Mansfield Ave.	Cedar Rapids	52403
James Kellogg	2557 Oxford Lane, N.W.	Cedar Rapids	52405
Melvin La Frenz	3219 Glenn Ave.	Sioux City	51106
Joyce Willson	613 Elm	Burlington	52601
Jerry Loghry	618 Grand Ave.	Story City	50248
Dennis De Jager	234 N. 7th Ave.	Sheldon	51201
Joseph Carney	106 E. Court	Winterset	50273
Robert Hosier	P.O. Box 91	Clive	50053
Theodore Pehne	RR 3, Box 126C	Burlington	52601
Paul Fredericks	P.O. Box 64	Bradford	50041

APPENDIX F

Sexual Abuse Law

CHAPTER 709

SEXUAL ABUSE

Victim-counselor privilege, see ch 236A

709.1 Sexual abuse defined.
709.2 Sexual abuse in the first degree.
709.3 Sexual abuse in the second degree.
709.4 Sexual abuse in the third degree.
709.5 Resistance to sexual abuse.
709.6 Jury instructions for offenses of sexual abuse.
709.7 Detention in brothel.
709.8 Lascivious acts with a child.
709.9 Indecent exposure.
709.10 Cost of medical examination in crimes of sexual abuse.
709.11 Assault with intent to commit sexual abuse.
709.12 Indecent contact with a child.
709.13 Child in need of assistance complaints.

709.1 Sexual abuse defined.

Any sex act between persons is sexual abuse by either of the participants when the act is performed with the other participant in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.

2. Such other participant is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.

3. Such other participant is a child.

[C51, §2581, 2583; R60, §4204, 4206; C73, §3861, 3863; C97, §4756, 4758; C24, 27, 31, 35, 39, §12966, 12967; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §698.1, 698.3; C79, 81, §709.1]

84 Acts, ch 1188, §1

Definition of sex act, §702.17

709.2 Sexual abuse in the first degree.

A person commits sexual abuse in the first degree when in the course of committing sexual abuse the person causes another serious injury.

Sexual abuse in the first degree is a class "A" felony.

[C51, §2581; R60, §4204; C73, §3861; C97, §4756; C24, 27, 31, 35, 39, §12966; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §698.1; C79, 81, §709.2]

Definition of forcible felony, §702.11

709.3 Sexual abuse in the second degree.

A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:

1. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.

2. The other participant is under the age of twelve.

3. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other participant.

Sexual abuse in the second degree is a class "B" felony.

[C51, §2581; R60, §4204; C73, §3861; C97, §4756; C24, 27, 31, 35, 39, §12966; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §698.1; C79, 81, §709.3]

84 Acts, ch 1188, §2

Definition of forcible felony, §702.11

709.4 Sexual abuse in the third degree.

Any sex act between persons who are not at the time cohabiting as husband and wife is sexual abuse in the third degree by a person when the act is performed with the other participant in any of the following circumstances:

1. Such act is done by force or against the will of the other participant.

2. The other participant is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.

3. The other participant is a child.

4. The other participant is fourteen or fifteen years of age and the person is a member of the same household as the other participant, the person is related to the other participant by blood or affinity to the fourth degree, or the person is in a position of authority over the other participant and used this authority to coerce the other participant to submit.

5. The person is six or more years older than the other participant, and that other participant is fourteen or fifteen years of age.

Sexual abuse in the third degree is a class "C" felony.

[C51, §2581, 2583; R60, §4204, 4206; C73, §3861, 3863; C97, §4756, 4758; C24, 27, 31, 35, 39, §12966,

12967; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §698.1, 698.3; C79, 81, §709.4]

Definition of forcible felony, §702.11
Definition of sex act, §702.17
Portion of subsection 2 held unconstitutional by Iowa Supreme Court, November 12, 1980; State v. Sullivan, No. 63808, 295 NW 2d 787

709.5 Resistance to sexual abuse.

Under the provisions of this chapter it shall not be necessary to establish physical resistance by a participant in order to establish that an act of sexual abuse was committed by force or against the will of the participant. However, the circumstances surrounding the commission of the act may be considered in determining whether or not the act was done by force or against the will of the other.

[C79, 81, §709.5]

709.6 Jury instructions for offenses of sexual abuse.

No instruction shall be given in a trial for sexual abuse cautioning the jury to use a different standard relating to a victim's testimony than that of any other witness to that offense or any other offense.

[C79, 81, §709.6]

709.7 Detention in brothel.

Any person who, by force, intimidation, or false pretense entices another who is not a prostitute to enter a brothel with the intent to cause such other to become an inmate thereof, or who detains another, whether a prostitute or not, in any brothel, against the will of such other, with the intent that such other engage in prostitution therein, commits a class "C" felony.

[C51, §2713; R60, §4355; C73, §4016; C97, §4942; S13, §4944-j; C24, 27, 31, 35, 39, §13180, 13181; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §724.8, 724.9; C79, 81, §709.7]

709.8 Lascivious acts with a child.

It is unlawful for any person eighteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the pubes or genitals of a child.
2. Permit or cause a child to fondle or touch the person's genitals or pubes.
3. Solicit a child to engage in a sex act.
4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

Any person who violates a provision of this section shall, upon conviction, be guilty of a class "D" felony.

[S13, §4938-a; C24, 27, 31, 35, 39, §13184; C46, 50, 54, 58, 62, 66, 71, 73, §725.2; C75, 77, §725.10; C79, 81, §709.8]

85 Acts, ch 181, §1

Definition of sex act, §702.17

709.9 Indecent exposure.

A person who exposes the person's genitals or pubes to another not the person's spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:

1. The person does so to arouse or satisfy the sexual desires of either party; and
2. The person knows or reasonably should know that the act is offensive to the viewer.

[C79, 81, §709.9]

Definition of sex act, §702.17

709.10 Cost of medical examination in crimes of sexual abuse.

The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be borne by the Iowa department of public health.

[C79, 81, §709.10]

709.11 Assault with intent to commit sexual abuse.

Any person who commits an assault, as defined in section 708.1, with the intent to commit sexual abuse is guilty of a class "C" felony if the person thereby causes serious injury to any person and guilty of a class "D" felony if the person thereby causes any person a bodily injury other than a serious injury. The person is guilty of an aggravated misdemeanor if no injury results.

[81 Acts, ch 204, §6]

709.12 Indecent contact with a child.

A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:

1. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.
2. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.
3. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.
4. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, 2, or 4.

The provisions of this section shall also apply to a person sixteen or seventeen years of age who commits any of the enumerated acts with a child who is at least five years the person's junior, in which case the juvenile court shall have jurisdiction under chapter 232.

[81 Acts, ch 204, §7]

85 Acts, ch 181, §2; 88 Acts, ch 1252, §4

See §709.8

709.13 Child in need of assistance complaints.

During or following an investigation into allegations of violations of this chapter or of chapter 726 or 728 involving an alleged victim under the age of eighteen and an alleged offender who is not a person responsible for the care of the child, anyone with knowledge of the alleged offense may file a com-

plaint pursuant to section 232.83 alleging the child to be a child in need of assistance. In all cases, the complaint shall be filed by any peace officer with knowledge of the investigation when the peace officer has reason to believe that the alleged victim may require treatment as a result of the alleged offense and that the child's parent, guardian, or custodian will be unwilling or unable to provide the treatment.

88 Acts, ch 1252, §5

728.12 Sexual exploitation of children.

1. A person commits a class "C" felony when the person employs, uses, persuades, induces, entices, coerces, knowingly permits, or otherwise causes a child to engage in a prohibited sexual act or in the simulation of a prohibited sexual act if the person knows, has reason to know, or intends that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, or other print or visual medium. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. A person commits a class "D" felony when the person knowingly promotes any material visually depicting a live performance of a child engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. A person who knowingly purchases any negative, slide, book, magazine or other print or visual medium depicting a child engaging in a prohibited sexual act or the simulation of a prohibited sexual act commits a serious misdemeanor.

However, this section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

[C79, 81, §728.12]

83 Acts, ch 167, §4; 86 Acts, ch 1176, §1-3

APPENDIX G

Reasonable Force Law

CHAPTER 704

FORCE – REASONABLE OR DEADLY

704.1 Reasonable force.
704.2 Deadly force.
704.3 Defense of self or another.
704.4 Defense of property.
704.5 Aiding another in the defense of property.
704.6 When defense not available.
704.7 Resisting forcible felony.
704.8 Escape from place of confinement.
704.9 Death.
704.10 Compulsion.
704.11 Police activity.
704.12 Use of force in making an arrest.

704.1 Reasonable force.

"Reasonable force" is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat. Reasonable force, including deadly force, may be used even if an alternative course of action is available if the alternative entails a risk to life or safety, or the life or safety of a third party, or requires one to abandon or retreat from one's dwelling or place of business or employment.

[C51, §2773; R60, §4442; C73, §4112; C97, §5102; C24, 27, 31, 35, 39, §12921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §691.1; C79, 81, §704.1; 81 Acts, ch 204, §2]

704.2 Deadly force.

The term *"deadly force"* means any of the following:

1. Force used for the purpose of causing serious injury.

2. Force which the actor knows or reasonably

should know will create a strong probability that serious injury will result.

3. The discharge of a firearm in the direction of some person with the knowledge of the person's presence there, even though no intent to inflict serious physical injury can be shown.

4. The discharge of a firearm at a vehicle in which a person is known to be.

[C79, 81, §704.2]

704.3 Defense of self or another.

A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force.

[C51, §2773–2775; R60, §4442–4444; C73, §4112–4114; C97, §5102–5104; C24, 27, 31, 35, 39, §12921–12923; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §691.1, 691.2(1), 691.3; C79, 81, §704.3]

704.4 Defense of property.

A person is justified in the use of reasonable force to prevent or terminate criminal interference with the person's possession or other right in property. Nothing in this section authorizes the use of any spring gun or trap which is left unattended and unsupervised and which is placed for the purpose of preventing or terminating criminal interference with the possession of or other right in property.

[C51, §2774; R60, §4443; C73, §4113; C97, §5103; C24, 27, 31, 35, 39, §12922; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §691.2(2); C79, 81, §704.4]

704.5 Aiding another in the defense of property.

A person is justified in the use of reasonable force to aid another in the lawful defense of the other person's rights in property or in any public property.

[C51, §2775; R60, §4444; C73, §4114; C97, §5104; C24, 27, 31, 35, 39, §12923; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §691.3; C79, 81, §704.5]

704.6 When defense not available.

The defense of justification is not available to the following:

1. One who is participating in a forcible felony, or riot, or a duel.

2. One who initially provokes the use of force against oneself, with the intent to use such force as an excuse to inflict injury on the assailant.

3. One who initially provokes the use of force against oneself by one's unlawful acts, unless:

a. Such force is grossly disproportionate to the provocation, and is so great that the person reasonably believes that the person is in imminent danger of death or serious injury or

b. The person withdraws from physical contact with the other and indicates clearly to the other that the person desires to terminate the conflict but the other continues or resumes the use of force.

[C79, 81, §704.6]

704.7 Resisting forcible felony.

A person who knows that a forcible felony is being perpetrated is justified in using, against the perpetrator, reasonable force to prevent the completion of that felony.

[C79, 81, §704.7]

704.8 Escape from place of confinement.

A correctional officer or peace officer is justified in using reasonable force, including deadly force, which is necessary to prevent the escape of any person from any jail, penal institution, correctional facility, or similar place of confinement, or place of trial or other judicial proceeding, or to prevent the escape from custody of any person who is being transported from any such place of confinement, trial or judicial proceeding to any other such place, except that deadly force may not be used to prevent the escape of one who the correctional officer or peace officer knows or should know is confined on a charge or conviction of any class of misdemeanor.

[C79, 81, §704.8]

704.9 Death.

A physician or a person acting on the direct orders of a physician who ceases to provide medical attention to a person who is dead, as death is defined in section 702.8, shall not be criminally liable for such cessation of medical attention.

[C79, 81, §704.9]

704.10 Compulsion.

No act, other than an act by which one intentionally or recklessly causes physical injury to another, is a public offense if the person so acting is compelled to do so by another's threat or menace of serious injury, provided that the person reasonably believes that such injury is imminent and can be averted only by the person doing such act.

[C79, 81, §704.10]

704.11 Police activity.

A peace officer or person acting as an agent of or directed by any police agency who participates in the commission of a crime by another person solely for the purpose of gathering evidence leading to the prosecution of such other person shall not be guilty of that crime or of the crime of solicitation as set forth in section 705.1, provided that all of the following are true:

1. The officer or person is not an instigator of the criminal activity.

2. The officer or person does not intentionally injure a nonparticipant in the crime.

3. The officer or person acts with the consent of superiors, or the necessity of immediate action precludes obtaining such consent.

4. The officer's or person's actions are reasonable under the circumstances.

This section is not intended to preclude the use of undercover or surveillance persons by law enforcement agencies in appropriate circumstances and manner. It is intended to discourage such activity to tempt, urge or persuade the commission of offenses by persons not already disposed to commit offenses of that kind.

[C79, 81, §704.11]

APPENDIX H

Response to Typical

Questions Regarding Chapter 102

RESPONSES TO TYPICAL QUESTIONS REGARDING CHAPTER 102

Q: Is there any immunity from liability or suit for the designated investigator?

A: Not at this time. Only the legislature can confer immunity by statute. If that does not happen, the legal expectation is that a designated investigator does his or her job in a "reasonably prudent manner." The rules and forms herein are designed to make sure the investigator does an effective job and can prove it by documenting the investigative process.

Q: What recourse exists for school employees who have a false complaint filed against them? Is there anything a wrongfully accused person can do?

A: The rules are designed to eliminate totally false or vexatious complaints: Notice there is no provision for anonymous reporting and there is a witnessing requirement. A person should not file a complaint in bad faith, but if that happens, the named school employee may wish to seek counsel regarding libel (written defamation), slander (verbal defamation), abuse of process or other grounds for suit.

Q: Does the law relate only to <u>actions</u> of the school employee? What about "omissions"?

A: Although the child abuse laws on which these rules were based (Iowa Code sections 232.68(2)(a), (b), and (d)) include omissions (failure to act to protect a child), these rules do not cover omissions. Thus, if a child is injured or abused by another student or someone other than a school employee, there is no chapter 102 jurisdiction or responsibility to go forward with an investigation.

Q: What if the complainant refuses to make a written report or refuses to sign a complaint?

A: There is no legal responsibility under these rules to investigate in the absence of a signed and witnessed complaint. However, because potential liability attaches if a person "knew or should have known" that abuse was occurring but did nothing to prevent it, the wise school officials will follow up -- albeit not necessarily in as formal a process as these rules.

Q: Does a parent or other complaining person have to use this process? If they do use this process, are they prohibited from going to the police, the media, a private attorney, or the State Board of Educational Examiners?

A: A complaining party has no obligation to use this process; the rules only apply when a complaint is made to the designated investigator or other school employee.

There is no way to prevent a complaining party from exercising the right to use any other process, even after he or she has filed a complaint with the designated investigator. Our hope is that this process will be unbiased and professional, so that people will trust it and believe it works. If they are not satisfied, of course they can pursue other investigative avenues.

Q: Do the confidentiality provisions apply to a complaining party?

A: No, but it would be helpful to the investigator if the complainant were urged to respect the student's and school employee's privacy rights by maintaining a degree of silence while the investigation proceeds. Potential witnesses who hear about accusations before they are interviewed as witnesses could be tainted by what they've heard.

Q: May an accused school employee who is a member of a bargaining unit have a union representative present during the interview process?

A: Yes, in fact they cannot be denied that right.

Q: May an accused school employee have an attorney present during the interview process?

A: Yes, but as we stated in the Model Policy, the best interview is one that takes place as soon as possible after the employee has learned of the complaint. Therefore, if a school employee asks not to answer questions until he or she can contact an attorney, and the attorney will not be available for several days, the investigation may have to continue in the absence of an interview with the employee.

Q: Who has the responsibility to notify a student's parent or guardian if someone else filed the complaint?

A: The designated investigator.

Q: When does the five-day timeline for investigation begin? upon receipt of a verbal report? only on receipt of a written report? Does the five-day timeline also apply to sexual abuse investigations?

A: Technically the time to conduct and complete the level-one investigation begins to run on the day a completed written report is received by the designated investigator (Day 1). The five-day timeline specifically applies to physical abuse allegations. A level-one investigation of sexual abuse does not have the five-day timeline for investigation. Both physical and sexual abuse investigative reports must be completed within 15 calendar (not school) days of receipt of a report.

Q: When the level-one investigator concludes that serious physical abuse or statutory sexual abuse is alleged, who are "appropriate law enforcement officials"? Is this different from the level-two investigator?

A: Law enforcement includes a county attorney's office, city or county police or sheriff's office. This is different from the level-two investigator. If a referral is made to law enforcement officials, that defers or temporarily halts the school's Chapter 102 investigation. If the investigation goes to level two, that is a continuation of the Chapter 102 process.

Q: Can other students be interviewed as collateral sources or witnesses, an if so, must parental consent be obtained?

A: Students may be interviewed as witnesses or persons with information to share without the school's obtaining consent to talk with them. Parental notification that the student was interviewed would be considerate, particularly in sensitive cases, but the contact must be made without breaching the confidentiality provisions of the rules. For example, "We are conducting an investigation into an incident at school and spoke with your son/daughter to see if he/she had any information to share that would help us in our investigation. Your child is not being accused of anything. I'm sorry but I am unable to give you any more information than that, but I did want you to know in case he/she mentions it to you."

Q: Does the designated investigator only have two options (founded or unfounded)? Is it possible to have an "undetermined" category?

A: At this time we do not believe the level-one investigator should have the third option. The level-one investigator's duty is to decide only "if it is likely that an incident occurred." If there is no preponderance of the evidence indicating something happened, then the report is unfounded -- not undetermined.

Q: The sexual abuse laws of Iowa are very specific regarding the age limits of victims, especially for 15, 16, and 17 year-olds. Should those reports be referred to the level-two investigator, law enforcement, or whom?

A: The definition of sexual abuse is intentionally broad to cover situations where the criminal law may technically not have been broken (for example, consent by a seventeen year-old victim to sexual intercourse) but where, nevertheless, the employee's behavior was unethical and clearly improper even if not a "crime" under Iowa law. Therefore, we have written the rules so that the lowest form of criminal sexual behavior triggers a referral to law enforcement and defers the investigation. Should law enforcement determine that the criminal law was not broken but the allegation may be true, the school is free to proceed with its investigation which may result in the conclusion that the employee violated the school's or board's policy on sexual abuse of students.

Q: Are counseling services for the student given at school expense?

A: The rule requires counseling only in cases of founded abuse and only when requested by the student or his or her parent or guardian. As the Comment section to rule 102.11(3) states, the school has no obligation to obtain outside counseling unless the school officials conclude that staff counselors are not qualified to provide those services. The duration of counseling services is up to the school, considering the recommendation of the counselor and the seriousness of the abuse.

Q: Is every allegation of abuse investigable?

A: No. The first thing the designated investigator does upon receiving a report (after making copies) is determine whether he or she has jurisdiction of the complaint. That involves establishing the following:

(1) The alleged victim is or was a student at the time of the incident;

(2) The accused is currently a school employee;

(3) The alleged incident occurred on school grounds on school time, on a school-sponsored activity, or in a school-related context; and

(4) The alleged act meets the definition of physical abuse (including the definition of injury) or sexual abuse of the rules.

Other facts that can cause the complaint to be rejected include the signature and witnessing requirements or insufficient facts to conduct an investigation.

APPENDIX I

Board of Educational

Examiners Complaint Form

State of Iowa
BOARD OF EDUCATIONAL EXAMINERS
Grimes State Office Building
Des Moines, Iowa 50319

BEFORE THE STATE BOARD OF EDUCATIONAL EXAMINERS

_____)
)
_____)
Complainant(s),)
) Case No._____
and)
) COMPLAINT
_____)
)
_____)
Respondent(s),

The above named Complainant(s), for complaint against the Respondent(s), states the following:

1. General Information:

(a) Respondent's Name: _____.

(b) Respondent's Address: _____.

(c) Respondent's Telephone Number: _____.

2. Respondent, a _____ in the
(position)
_____ School, County of _____, Iowa,

did, on or about _____ violate standards of professional ethics and
(date)
practices of the teaching profession in the following specific instances:

(Here cite (a) the specific place and circumstances of the violation and (b), if known, the specific section of the Statutes or Rules and Regulations allegedly violated.)

_____

_____

_____

_____

_____

_____

_____

_____

3. Other persons able to give information about this complaint are:

Name	Address	Phone	Position

4. The following steps have been taken in an attempt to resolve this problem:

The Complainant hereby requests the Iowa Board of Educational Examiners to investigate this complaint and hold a hearing thereon in accordance with Chapter 272A of the Iowa Code, as amended, and its Rules and Regulations issued thereunder, and further requests the Iowa Board of Educational Examiners to take such action as is warranted by the facts as determined by such an investigation and hearing within the purview of said statutes.

Dated this _____ day of _____, 19____.

_____
(Signature)

By_____
(Name and Title or Position)

_____
(Address)

_____
(Telephone Number)

COMPLAINANT